

3.  
(3)

THE  
CASE  
OF  
IRELAND's  
Being BOUND by  
Acts of Parliament  
IN  
ENGLAND,  
Stated.

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BY  
*William Molyneux,*  
of Dublin, Esq;

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ner-Row. MDCXC VIII.*

THE  
CASE  
OF  
IRELAND

Being, Books of  
Acts of Parliament

ENGLAND

Scanned

By  
William M. Jones  
of Dublin

Dublin: Printed by  
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**TO THE  
KING.**

**SIR,**  
**T**HE Expedition  
Your MAJESTY  
Undertook into  
*England*, to Res-  
cue these Nations from Ar-  
bitrary Power, and those Un-  
just Invasions that were made

on our Religion, Laws,  
Rights and Liberties, was an  
Action in it Self so Great,  
and of such Immense Bene-  
fit to our Distressed Coun-  
tries, that 'tis Impossible to  
give it a Representation so  
*Glorious* as it Deserves. Of  
all Your Majesty's Kingdoms,  
none was more Sensible of  
the Happy Effects thereof,  
than Your *Kingdom of Ireland*,  
which from the Depth of  
Misery and Despair, is Rai-  
sed by your Majesty to a Pro-  
sperous and Flourishing Con-  
dition. And we presume  
most humbly to Implore the  
Continuance of Your Maje-  
sty's Graces to us, by Prote-  
cting

King and Defending those  
Rights and Liberties which we  
have Enjoy'd under the  
Crown of *England* for above  
Five Hundred Years, and  
which some of late do En-  
deavour to Violate. Your  
most Excellent Majesty is  
the *Common Indulgent Father* of  
all your Countries; and have  
an *Equal* Regard to the *Birth-*  
*Rights* of all Your Children;  
and will not permit the *Eld-*  
*est*, because the *Strongest*, to  
Encroach on the Possessions  
of the *Younger*: Especially  
considering with what Duty,  
Loyalty, and Filial Obedi-  
ence, we have ever behav'd  
our selves to Your Majesty:

Infomuch that I take leave  
to Assert, That Your Maje-  
sty has not in all Your Domi-  
nions a People more *United*  
and *Steady* to Your Interests,  
than the *Protestants of Ireland*:  
Which has manifestly Ap-  
pear'd in all our Actions and  
Parliamentary Proceedings,  
since Your Majesty's Happy  
Accession to the Throne.  
To Relieve the Distress'd,  
has ever been the Peculiar  
*Character* of Your Majesty's  
*Glorious Family*. The *United*  
*Provinces* have found this in  
Your *Famous Ancestors*: And  
all *Europe* has been Sensible  
of this in Your *Royal Person*.  
To this End more particu-  
larly

larly You came into these Kingdoms, as Your Majesty has been pleas'd to Declare: And as You have Establish'd the *Rights and Liberties of England* on a Foundation that, we hope, can never be shaken; So we doubt not but Your Sacred Majesty will have a Tender Care of Your Poor Subjects of Ireland, who are *Equally* Your Subjects, as the rest of Your People.

Pardon, I most Humbly beseech Your Majesty, my Presumption, in Appealing to You on this Occasion: Nothing but the *Dignity* and *Weight* of the Subject, can

Excuse my Boldness herein;  
But if That be Consider'd,  
it Deserves the Regard of  
the *Greatest Prince*; 'Tis no  
less than the *Rights* and *Li-*  
*berties* of one of His King-  
doms, on which their Reli-  
gion, their Property, their  
*All* Depends; and which  
they have Enjoyed for Five  
Hundred Years past. This,  
I think, I have clearly shewn  
in the following Leaves: I  
am sure, if my *Management*  
thereof, were suitable to the  
*Justice* of our Cause, our  
*Friends of England* can no  
longer Doubt it.

At Your Majesty's Feet  
therefore, I throw it ; and  
with it the Unworthy Au-  
thor thereof,

*(May it please Your Majesty)*

*Your Majesty's*

*Most Dutiful, Loyal,*

*and Obedient*

*Subject and Servant,*

William Molyneux.



At Your Majesty's Feet  
therefore I throw it; and  
with it the Unworthy An-  
nouncement

(My it is for Your Majesty)

Your Majesty

My Dear Majesty

Obey

2nd 1st 2nd

My Dear Majesty

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# PREFACE

TO THE

READER.

**I** Have nothing to Offer  
in this Preface, more  
than to let the Reader  
know, how Unconcern'd  
I am in any of those Particular  
Inducements, which might seem  
at

at this Juncture to have Occasion'd the following Discourse.

I have not any Concern in Wooll, or the Wooll-Trade. I am no wise Interested in the Forfeitures, or Grants. I am not at all Solicitous, whether the Bishop, or Society of Derry Recover the Land they Contest about.

So that, I think, I am as Free from any Personal Prejudice in this Cause, as 'tis possible to Expect any Man should be, that has an Estate and Property in this Kingdom, and who is a Member of Parliament therein. I hope therefore 'tis a Publick

He Principle that has mov'd  
me to this Undertaking : I am  
sure, I am not Conscious to my  
Self of any other Intention.

I have heard it has been said,  
That perhaps I might run some  
Hazard in Attempting this Ar-  
gument; But I am not at all Ap-  
prehensive of any such Danger :  
We are in a Miserable Condition  
indeed, if we may not be Al-  
low'd to Complain, when we  
think we are Hurt; and to  
give our Reasons with all Mo-  
desty and Submission. But  
were it otherwise, it would not  
in the least Affect, or Discourage  
me in an Attempt, where I think  
my Cause Good, and my Country  
Con-

Concern'd, and where I am fully  
persuaded, the True Interest  
of England is as Deeply En-  
gaged, as the Protestant Interest  
of Ireland.

The Great and Just Coun-  
cil of England freely Allows  
all Addresses of this sort To  
Receive and Hear Grievances,  
is a great part of their Business;  
and to Redress them, is their  
Chief Glory. But this is not  
to be done, till they are laid be-  
fore them, and fairly Stated for  
their Consideration.

This I have endeavour'd in  
the following Paper. What Suc-  
cess it may have, I am not very  
soliciti-

*solicitors about. I have Done  
what I thought was my Duty;  
and Commit the Event to GOD  
Almighty, and the Wise  
Council of England.*

*Dublin, Febr. 8.*

*1698<sup>7</sup>.*

W. MOLYNEUX.

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The

Solicitors about. I have Done  
 what I thought was my Duty,  
 and Counsel the House to GOD  
 Almighty, and the Will  
 Council of England.

Dublin, Febr. 8.

1698.

W. MORTIMER.



The CASE  
OF  
IRELAND's  
Being Bound by  
Acts of Parliament  
IN  
ENGLAND,  
STATED.

I HAVE ever been <sup>Introduction,</sup> fully perswaded of the <sup>and Occasion</sup> strict Justice of the Parlia- <sup>of this Dis-</sup>ment of *England*, that I quisation.  
could never think that any  
of Their Proceedings,  
which might seem to have  
the least Tendency to Hardship on  
their Neighbours, could arise from  
any thing but want of Due Infor-  
mation, and a right State of the  
B Business

Business under their Consideration. The want of which, in Matters wherein another People are chiefly Concern'd, is no Defect in the Parliament of *England*, but is highly Blameable in the Persons whose Affair is Transacting, and who permit that Illustrious Body of Senators to be Mis-inform'd, without giving them that Light that might Rectifie them.

I could never Imagine that those Great Assertors of their Own Liberties and Rights, could ever think of making the least Breach in the Rights and Liberties of their Neighbours, unless they thought that they had Right so to do; and this they might well surmise, if their Neighbours quietly see their Inclosures Invaded, without *disputing* the Matter at least, and shewing Reasons, why they may think that Hardships are put upon them therein.

The Consideration hereof has Excited me to undertake this Disquisition, which I do with all Imaginable Diffidence of my own Performance, and with the most profound

found Respect and Deference to  
 that August Senate. The present  
 Juncture of Affairs, when the Busi-  
 ness of *Ireland* is under the Consi-  
 deration of both Houses of the  
 English Parliament \*, seems to re-  
 quire this from some Person ; and  
 seeing all Others silent, I venture  
 to Expose my own Weakness, ra-  
 ther than be wanting at this time  
 to my Country. I might say indeed  
 to Mankind ; for 'tis the Cause of  
 the whole Race of *Adam*, that I  
 Argue: *Liberty* seems the Inherent  
 Right of all *Mankind* ; and on  
 whatsoever Ground any one Nati-  
 on can Challenge it to themselves,  
 on the same Reason may the Rest  
 of *Adam's* Children Expect it.

If what I Offer herein seems to  
 carry any Weight, in relation to  
 my own Poor Country, I shall be  
 abundantly happy in the Attempt :  
 But if after all, the Great Council  
 of *England* Resolve the contrary,  
 I shall then believe my self to be  
 in an Error, and with the lowest  
 Submission ask Pardon for my Af-  
 surance. However, I humbly pre-  
 sume I shall not be hardly Censur'd

\* Bishop of  
*Derry* in the  
 House of  
 Lords, and  
 Prohibiting  
 Exportation  
 of our Wool-  
 len Manufa-  
 cture in the  
 House of  
 Commons.

by them, for offering to lay before them a fair State of our Case, by such Information as I can procure; especially when at the same time I declare my Intention of a Submissive Acquiescence in whatever they Resolve for or against what I Offer.

Subject of this Enquiry.

The Subject therefore of our present Disquisition shall be, *How far the Parliament of England may think it Reasonable to intermeddle with the Affairs of Ireland, and Bind us up by Laws made in their House.*

And seeing the Right which England may pretend to, for Binding us by their Acts of Parliament, can be founded only on the *Imaginary Title of Conquest or Purchase*, or on *Precedents and Matters of Record*; We shall Enquire into the following Particulars.

(1.) *First, How Ireland became a Kingdom Annex'd to the Crown of England. And here we shall at large give a faithful Narrative of the First Expedition of the Britains into this Country, and King Henry*

*Henry the Second's Arrival here, such as our best Historians give us.*

(2.) *Secondly*, We shall Enquire, Whether this Expedition, and the English Settlement that afterwards follow'd thereon, can properly be call'd a *Conquest*? Or whether any Victories obtain'd by the English, in any succeeding Ages in this Kingdom, upon any *Rebellion*, may be call'd a *Conquest* thereof?

(3.) *Thirdly*, Granting that it were a *Conquest*, we shall Enquire what *Title* a *Conquest* gives.

(4.) *Fourthly*, We shall Enquire what *Concessions* have been from time to time made to *Ireland*, to take off what even the most Rigorous Assertors of a Conquerour's Title do pretend to. And herein we shall shew by what Degrees the English Form of Government, and the English Statute-Laws, came to be received among us : And this shall appear, to be wholly by the *Consent* of the People and Parliament of *Ireland*.

(5.) *Fifthly*, We shall Enquire into the Precedents and Opinions of the Learned in the Laws, relating to this Matter, with Observations thereon.

(6.) *Sixthly*, We shall Consider the Reasons and Arguments that may be farther Offered on one side and t'other ; and shall Draw some General Conclusions from the Whole.

*Britain's first  
Expedition in-  
to Ireland.*

As to the First, We shall find the History of the First Expedition of the *English* into *Ireland*, to be briefly thus : In the Reign of King *Henry* the Second, *Dermot Fitzmurchard*, commonly called *Mac-Morrogh*, Prince of *Leinster*, who was a Man Cruel and Oppressive, after many Battels with other Princes of *Ireland*, and being Beaten and put to Flight by them, Apply'd for Relief to King *Henry* the Second, who was then busied in *Aquitain* ; the King was not then in such Circumstances as to afford him much Help : However thus much he did for him,  
By



By Letters Patents he granted Licence to all his Subjects throughout his Dominions, to Assist the said Prince to Recover his Dominions. These Letters Patents are to be seen in \* *Giraldus Cambrensis*, \* *Giraldus*  
 who was Historiographer and Secretary to King *Hen. II.* and Accompanied him in his Expedition into *Ireland*, and from him it is that we have this Relation. The *Irish Prince* brought these Letters into *England*, and caused them to be Read in the Audience of many People; Beating up, as it were, for Voluntiers and free Adventurers into *Ireland*. At length, *Richard* Earl of *Strigul* (now *Chepstow* in *Monmouthshire*) Son of Earl *Gilbert*, call'd *Strongbow*, Agreed with him, to Assist him in the Recovery of his Country, on Condition that *Dermot* should give him his Eldest Daughter in Marriage, and his Kingdom of *Leinster* after his Death. About the same time *Robert Fitz-Stephen*, Governour of *Aberlesie* in *Wales*, Agreed likewise with *Dermot* to help him, on Condition that he would grant to him and *Maurice Fitzgerald* in Fee

*Cambr. Hib.*  
*Expug. Lib. I.*  
 C. I,



the City of *Wexford*, with two Cantreds or Hundreds of Land near adjoyning.

These Adventurers afterwards went over, and were successful in Treating with the *Irish*, and Taking *Wexford*, *Waterford*, *Dublin*, and other Places. Whereupon Earl *Richard Strongbow* married *Dermot's* Daughter, and according to Compact, succeeded him in his Kingdom.

*Hen. II. comes into Ireland.*

A little after the Descent of these Adventurers, King *Henry II.* himself went into *Ireland* with an Army, in *November 1172.* and finding that his Subjects of *England* had made a very good hand of their Expedition, he obtain'd from Earl *Richard Strongbow* a Surrender of *Dublin*, with the Cantreds adjoyning, and all the Maritime Towns and Castles. But *Strongbow* and his Heirs were to Enjoy the Residue of *Dermot's* Principality.

*Irish submit to him.*

King *Hen. II.* Landed at *Waterford* from *Milford* in *Pembrookshire*, and staying there some few days,  
(says

(says Giraldus Cambrensis) Rex Cor-  
*cagiensis Dormitius advenit ei, &*  
*tam Subjectionis vinculo quam fide-*  
*tatis Sacramento Regi Anglorum se*  
*sponte submitit. He freely swore Feal-*  
*ty and Subjection to the King of*  
*England.*

From thence he went to *Lismore*,  
 and thence to *Cashel*, where *Dunal-*  
*du* King of *Lymerick*, *se quoque fide-*  
*lem Regi exhibuit.* The like did  
 all the Nobility and Princes in the  
 South of *Ireland*.

Afterwards he marched to *Dub-*  
*lin*, and there the Princes of the  
 Adjacent Countries came to him,  
 & *sub Fidelitatis & Subjectionis ob-*  
*tentu a Rege Pacem impetrabant.*  
 Thus *Cambrensis* in his *Hibernia*  
*Expugnata*; and there he mentions  
 the several Princes that came in,  
 vizt. *Macshaghlin* King of *Ophaly*,  
*O Carrol* King of *Uriel* (now *Lowth*)  
*O Rourk* King of *Meath*, *Rotherick*  
*O Connor* King of *Connaught*, and  
*Monarch* as it were of the whole  
 Island, with divers others, *qui fir-*  
*missimis fidelitatis & subjectionis vin-*  
*culis Domino Regi innodarunt & in*  
*singu*

*singulari Rotherico Conaditæ Principi  
tanquam Insulæ Monarchâ subditi  
redduntur universi, nec alacius fera  
in Insula vel nominis vel omnis erat  
qui Regiæ Majestati & Debitam Do-  
mino Reverentiam, non exhiberet.*

The same Relation we have  
from Roger Hoveden (Annal. par-  
poster. fol. 301.) About the Ka-  
lends of November 1172. (saith he)  
King Henry II. of England, took  
Shipping for Ireland at Milford, and  
Landed at Waterford, & ibi vene-  
runt ad eum Rex Corcagiensis, Rex  
de Limerick, Rex de Oxenie, Rex Mi-  
diæ, & fere omnes Hiberniæ Poten-  
tes. And a little afterwards in the  
same place speaking of King Henry  
the Second's being at Waterford,  
ibidem venerunt ad Regem Angliæ  
omnes Archiepiscopi, Episcopi, &  
Abbates totius Hiberniæ, & recepe-  
runt eum in Regem & Dominum Hi-  
bernæ jurantes ei & heredibus suis  
Fidelitatem & Regnandi Super eos  
Potestatem in perpetuum & inde De-  
derunt ei Chartas suas. Exemplo au-  
tem Clericorum predicti Reges &  
Principes Hibernæ receperunt simili  
modo Henricum Regem Angliæ in  
Domi-

*Dominum & Regem Hiberniæ, & sui devenerunt, & ei & Heredibus suis Fidelitatem contra omnes Jura-  
verunt.*

*Matthew Paris* likewise in his History speaking of King *Hen. II.* being in *Ireland*, saith, *Archiepiscopi & Episcopi ipsum in Regem & Dominum receperunt, & ei Fidelitatem & Homagium Juraverunt.*

*John Brampton* Abbot of *Jornal* in his *Historia Jornalensi*, pag. 1070. speaking of *Hen. II.* hath these words, *Recepit ab unoquoque Archiepiscopo & Episcopo Hiberniæ Literas cum Sigillis suis in modum Chartæ pendentibus, Regnum Hiberniæ sibi & Hæredibus suis Confirmantes, & Testimonium perhibentes ipsos in Hibernia eum & Heredes suos sibi in Reges & Dominos in perpetuum Constituisse.* All the Archbishops, Bishops, and Abbots of *Ireland* came to the King of *England*, and Received him for King and Lord of *Ireland*, swearing Fealty to him and his Heirs for ever. The Kings also and Princes of *Ireland*, did in like manner Receive *Henry*  
King

King of *England*, for Lord of *Ireland*, and became his Men, and did him Homage, and swore Fealty to him and his Heirs against all Men. And he received Letters from them with their Seals pendent in manner of Charters, confirming the Kingdom of *Ireland* to him and his Heirs; and Testifying, that they in *Ireland* had Ordain'd him and his Heirs to be their King and Lord of *Ireland* for ever. After which, he return'd into *England* in *April* following, vizt. *April* 1173.

*Ireland* whether  
there ever Con-  
quer'd

I come now to Enquire into our Second Particular proposed, *Viz.* Whether *Ireland* might be properly said to be Conquer'd by King *Henry* the Second, or by any other Prince in any succeeding Rebellion. And here we are to understand by *Conquest*, an *Acquisition of a Kingdom by Force of Arms, to which, Force likewise has been Opposed*, if we are to understand *Conquest* in any other sense, I see not of what Use it can be made against *Ireland*s being a Free Country. I know *Conquestus* signifies a Peaceable Acquisition, as well as an Hostile Subju-

Subjugating of an Enemy. *Vid. Spelman's Glos.* And in this sense *William* the First is call'd the Conquerour, and many of our Kings have used the *Epocha post Conquestum*. And so likewise *Henry* the Second stiled himself *Conquestor & Dominus Hiberniæ*; but that His Conquest was no violent Subjugation of this Kingdom, is manifest from what foregoes: For here we have an Intire and Voluntary Submission of all the Ecclesiastical and Civil States of *Ireland*, to King *Henry II.* without the least Hostile Stroke on any side; We hear not in any of the Chronicles of any Violence on either Part, all was Transacted with the greatest Quiet, Tranquility, and Freedom, imaginable. I doubt not but the Barbarous People of the Island at that time were struck with Fear and Terror of King *Hen. II's* Powerful Force which he brought with him; but still their Easie and Voluntary Submissions Exempts them from the Consequents of an *Hostile Conquest*, whatever they are; where there is no Opposition, such a Conquest can take no place.



\* Mr. Selden  
will not allow  
that ever H. 2.  
used this Stile.  
Tit. Hon. Par. 2.  
C. 5. Sect. 26.

I have before taken Notice of Henry the II's using the Stile of *Conquestor Hiberniæ* \*; I presume no Argument can be drawn from hence, for Ireland's being a Conquer'd Country; for we find that many of the Kings of England have used the *Ara* of *post Conquestum*; Edward the Third was the first that used it in England, and we frequently meet with *Henricus post Conquestum Quartus*, &c. as taking the Norman Invasion of William the First, for a Conquest. But I believe the People of England would take it very ill to be thought a Conquer'd Nation, in the sense that some impose it on Ireland: And yet we find the same Reason in one Case, as in t'other, if the Argument from the King's Stile of *Conquestor* prevail. Nay, England may be said much more properly to be Conquer'd by William the First, than Ireland by Henry the Second: For we all know with what Violence and Opposition from Harrold, &c. William obtain'd the Kingdom, after a Bloody Battel nigh *Hastings*. Whereas Henry the



the Second receiv'd not the least  
 Opposition in *Ireland*; all came in  
 Peaceably, and had large Conces-  
 sions made them of the like Laws  
 and Liberties with the People of  
*England*; which they gladly Acce-  
 pted, as we shall see hereafter. But  
 I am fully satisfy'd, that neither  
 King *William* the First, in his Ac-  
 quisition of *England*, nor *Henry II.*  
 in his Acquest of *Ireland*, obtain'd  
 the least Title to what some would  
 give to Conquerours. Tho' for my  
 own part, were they Conquerours in  
 a sense never so strict, I should en-  
 large their Prerogative very little or  
 nothing thereby, as shall appear  
 more fully in the Sequel of this  
 Discourse. To assist you over or  
 into it, I shall gain say, or  
 and Another Argument for *Henry* the  
 Second's *Hostile Conquest of Ireland*  
 is taken from the Opposition which  
 the Natives of *Ireland* gave to the  
 first Adventurers, *Fitz-Stephen*,  
*Fitzgerald*, and *Earl Strongbow*, and  
 the Battles they fought in assisting  
*Mac-Morogh* Prince of *Leinster*, in  
 the Recovery of his Principality.

Tis:

'Tis certain there were some Conflicts between them and the *Irish*, in which the Latter were constantly beaten; but certainly the Conquests obtain'd by those Adventurers, who came over only by the King's *License* and *Permission*, and not at all by his particular *Command* (as is manifest from the words of the Letters Patents of *License* recited by *Giraldus Cambrensis*, *Hib. Expug.* pag. 760. *Edit. Francof.* 1603. *Angl. Norm. Hiber. Camd.*) can never be call'd the Conquest of *Henry* the Second, especially considering that *Henry* the Second himself does not appear to have any Design of Coming into *Ireland*, or Obtaining the Dominion thereof, when he gave to his Subjects of *England* this *License* of Assisting *Mac-Morrough*. But I conceive rather the contrary appears, by the Stipulations between *Mac-Morrough* and the Adventurers, and especially between him and *Strongbow*, who was to succeed him in his Principality.

From what foregoes, I presume <sup>Suppressing</sup> ~~It~~ Appears that *Ireland* cannot properly be said *so to be Conquer'd* by <sup>Rebellions,</sup> ~~whether a~~ <sup>Conquest.</sup> *Henry* the Second, as to give the Parliament of *England* any Jurisdiction over us; it will much more easily Appear, that the *English* *Victories* in any succeeding *Rebellions* in that Kingdom, give no *Pretence* to a *Conquest*: If every Suppression of a Rebellion may be call'd a *Conquest*, I know not what Country will be excepted. The *Rebellions* in *England* have been frequent; in the Contests between the Houses of *Tork* and *Lancaster*, one side or other must needs be *Rebellious*. I am sure the Commotions in King *Charles* the First's time, are stiled so by most Historians. This *Pretence* therefore of *Conquest* from *Rebellions*, has so little Colour in it, that I shall not insist longer on it: I know *Conquest* is an hateful word to English Ears, and we have lately seen a Book \* undergo a se- \* Bishop of *Salisbury's* *Pastoral Letter*, vere Censure, for offering to broach the *Doctrine of Conquest* in the *Free Kingdom of England*,

What Title is  
obtain'd by  
Conquest.

But, to take off all Pretence from this Title by *Conquest*, I come in the third Place to enquire, *What Title Conquest gives by the Law of Nature and Reason.*

No Title  
gain'd by an  
Unjust Con-  
quest.

And in this particular I conceive, that if the Aggressor or Invader invades a Nation *Unjustly*, he can never thereby have a Right over the Conquered: This I suppose will be readily granted by all men: If a Villain with a Pistol at my Brest, makes me convey my Estate to him, no one will say that this gives him any Right: And yet just such a Title as this has an *Unjust Conquerour*, who with a Sword at my Throat forces me into Submission; that is, forces me to part with my *Natural Estate*, and Birth-right, of being govern'd only by Laws to which I give my *Consent*, and not by his Will, or the Will of any other.

What Title by  
a just Con-  
quest.

Let us then suppose a *Just Invader*, one that has *Right* on his side to Attack a Nation in an *Hostile* manner; and that those who oppose

oppose him are in the *Wrong*: Let  
us then see what Power he gets,  
and over whom.

First, 'Tis plain he gets by his None over  
the Assisters  
in the Con-  
quest.  
Conquest no Power over those who  
*Conquered with him*; they that  
fought on his side, whether as pri-  
vate Soldiers or Commanders, can-  
not suffer by the Conquest, but  
must at least be as much Freemen,  
as they were before: If any lost  
their Freedom by the *Norman Con-  
quest*, (supposing King *William* the  
First had *Right* to Invade England)  
it was only the *Saxons* and *Bri-  
tains*, and not the *Normans* that  
Conquered with him. In like man-  
ner supposing *Hen. II.* had *Right* to  
Invade this Island, and that he had  
been opposed therein by the Inha-  
bitants, it was only the *Antient  
Race* of the *Irish*, that could suffer  
by this Subjugation; the *English*  
and *Britains*, that came over and  
Conquered with him, retain'd all  
the Freedoms and Immunities of  
*Free-born* Subjects; they nor their  
Descendants could nor in reason  
lose these, for being Successful and  
*Victorious*; for so, the state of

*Conquerours* and *Conquered* shall be equally *Slavish*. Now 'tis manifest that the great Body of the present People of *Ireland*, are the Progeny of the *English* and *Britains*, that from time to time have come over into this Kingdom; and there remains but a meer handful of the Antient *Irish* at this day; I may say, not one in a thousand: So that if I, or any body else, claim the like Freedoms with the Natural Born Subjects of *England*, as being Descended from them, it will be impossible to prove the contrary. I conclude therefore, That a *Just Conquerour* gets no Power, but only over those who have *Actually Assisted* in that *Unjust* Force that is used against him.

None over the  
Non-Opposers

And as those that joyned with the Conquerour in a Just Invasion, have lost no Right by the Conquest; so neither have those of the Country who *Oppos'd* him not: This seems so reasonable at first Proposal, that it wants little Proof. All that gives Title in a *Just* Conquest, is the *Opposers* using *Brutal Force*, and quitting the Law of Reason,



Reason, and using the Law of Violence; whereby the Conquerour is entitled to use him as a *Beast*; that is, Kill him, or Enslave him.

Secondly, Let us consider what *Just Conquerour* Power that is, which a *Rightful* our intitled to the Lives of the Opposers. *Conquerour* has over the Subdued *Opposers*: And this we shall find extends little farther than over the *Lives* of the *Conquer'd*; I say, *little farther* than over their *Lives*; for how far it extends to their *Estates*, and that it extends not at all to Deprive their *Posterity* of the *Freedom* and *Immunities* to which all *Mankind* have a *Right*, I shall shew presently. That the *Just Conquerour* has an *Absolute Power* over the *Lives* and *Liberties* of the *Conquer'd*, appears from hence, Because the *Conquer'd*, by putting themselves in a *State of War* by using an *Unjust Force*, have thereby forfeited their *Lives*. For quitting *Reason*, (which is the Rule between Man and Man) and using *Force* (which is the way of *Beasts*) they become liable to be destroyed by him against whom they use *Force*, as any savage wild *Beast* that



that is Dangerous to his Being

And this is the Case of *Rebels* in a settled Commonwealth, who forfeit their Lives on this Account. But as for forfeiting their Estates, it depends on the Municipal Laws of the Kingdom. But we are now Enquiring what the Consequents will be between two Contesting Nations.

Which brings me to Consider how far a Just Conquerour has Power over the *Posterity* and *Estates* of the Conquer'd.

Just Conquerour how far impower'd over the Posterity of the Opposers.

As to the *Posterity*, they not having Joyn'd or Assisted in the *Forcible Opposition* of the Conquerours *Just Arms*, can dese no Benefit thereby. 'Tis unreasonable any Man should be punish'd but for his own fault. Man being a free Agent, is only Answerable for his own Demerits; and as it would be highly Unjust to Hang up the Father for the Sons Offence, so the Converse is equally Unjust, that the Son shou'd suffer any Inconvenience for the Fathers Crime.

A Father hath not in himself a power over the Life or Liberty of his Child, so that no Act of his can possibly forfeit it. And tho we find in the Municipal Laws of particular Kingdoms, that the Son loses the Fathers Estate for the Rebellion or other Demerit of the Father, yet this is Consented and Agreed to, for the Publick Safety, and for deterring the Subjects from certain Enormous Crimes that would be highly prejudicial to the Commonwealth. And to such Constitutions the Subjects are bound to submit, having consented to them, tho it may be unreasonable to put the like in Execution between Nation and Nation in the State of Nature: For in Settled Governments, Property in Estates is Regulated, Bounded and Determined by the Laws of the Commonwealth, consented to by the People, so that in these, 'tis no Injustice for the Son to lose his Patrimony for his Fathers Rebellion or other Demerit.

How far over  
their Estates.

If therefore the *Posterity* of the Conquer'd are not to suffer for the Unjust *Opposition* given to the Victor by their *Ancestors*, we shall find little place for any Power of the Conquerours over the *Estates* of the Subdued. The *Father* by his Miscarriages and Violence can forfeit but his own Life, he involves not his *Children* in his Guilt or Destruction. His *Goods*, which *Nature* (that willet the Preservation of all *Mankind* as far as possible) hath made to belong to his *Children* to sustain them, do still continue to belong to his *Children*. 'Tis true indeed, it usually happens that *Damage* attends Unjust Force; and as far as the *Repair* of this *Damage* requires it, so far the Rightful Conquerour may invade the *Goods* and *Estate* of the Conquer'd; but when this *Damage* is made up, his Title to the *Goods* ceases, and the Residue belongs to the *Wife* and *Children* of the Subdued.

It may seem a strange Doctrine, that any one should have a Power over the *Life* of another Man, and  
not

not over his *Estate*; but this we find every day, for tho' I may Kill a Thief that sets on me in the High-way, yet I may not take away his *Money*; for 'tis the *Brutal Force* the Aggressor has used, that gives his Adversary a Right to take away his *Life*, as a noxious Creature. But 'tis only *Damage sustain'd*, that gives Title to another Mans *Goods*.

It must be confess'd that the Practice of the World is otherwise, and we commonly see the Conqueror (whether *Just or Unjust*) by the Force he has over the Conquer'd, compels them with a Sword at their Brest to stoop to his Conditions, and submit to such a Government as he pleases to Afford them. But we Enquire not now, what is the *Practice*, but what *Right there is to do* for or for it be said either Conquer'd to submit by their own *Consent*: Then this allows *Consent* necessary to give the Conquerour a Title to Rule over them. But then we may Enquire whether *Promises Extorted by Force without Right*, can be thought *Consent*, and how far they are

Practice of  
Conquerors o-  
therwise.

are *Obligatory*; And I humbly conceive they *Bind not at all*. He that *forces* my Horse from me, ought presently to *Restore* him, and I have still a *Right* to retake him: So he that has *forced* a Promise from me, ought presently to *Restore* it, that is, quit me of the *Obligation* of it, or I may chuse whether I will perform it or not: For the *Law of Nature* obliges us only by the *Rules* she prescribes, and therefore cannot oblige me by the *Violation* of her Rules; such is the *Extorting* any thing from me by *Force*.

From what has been said, I presume it pretty clearly appears that an *Unjust Conquest* gives *no Title* at all; That a *Just Conquest* gives *Power* only over the *Lives* and *Liberties* of the *Actual Opposers*, but not over their *Posterity* or *Estate*, otherwise than as before is mentioned; and not at all over those that did not *Concur* in the *Opposition*.

They that desire a more full Disquisition of this Matter, may find it at large in an Incomparable *Treatise* concerning the *True Original, Extent*



*Extent and End of Civil Govern-  
ment*, Chap. 16. This Discourse is  
said to be written by my Excellent  
Friend, *JOHN LOCKE*, Esq; Whe-  
ther it be so or not, I know not;  
This I am sure, whoever is the  
Author, the Greatest Genius in  
*Christendom* need not disown it.

But granting that all we have  
said in this Matter is *Wrong*, and  
granting that a Conquerour, whe-  
ther *Just* or *Unjust*, obtains an *Ab-  
solute Arbitrary Dominion* over the  
Persons, Estates, Lives, Liberties  
and Fortunes of all those whom  
he finds in the Nation, their Wives,  
Posterity, &c. so as to make perpet-  
ual *Slaves* of them and their Ge-  
nerations to come; Let us next  
Enquire whether *Concessions* grant-  
ed by such a Victorious *Hero*, do  
not bound the Exorbitancy of his  
Power, and whether he be not  
Obliged strictly to Observe these  
Grants.

*Concessions*  
granted by a  
Conquerour,  
whether Oblig-  
atory,

And here I believe no Man of  
Common Sense or Justice, will  
Deny it; None that has ever  
Consider'd the Law of Nature  
and

and Nations, can possibly hesitate on this matter; the very Proposing it, strikes the Sense and Common Notions of all Men so forcibly, that it needs no farther proof. I shall therefore insist no longer on it, but hasten to consider how far this is the Case of *Ireland*: And that brings me naturally to the fourth Particular propos'd, *vizt.* To shew by Precedents, Records, and History, what Concessions and Grants have been made from time to time to the People of *Ireland*, and by what steps the Laws of *England* came to be introduced into this Kingdom.

What Concessions have been made from the Crown of *England* to the Kingdom of *Ireland*.

By Henry II.

We are told by *Matth. Paris*, Historiographer to *Hen. II.* that *Henry the Second*, a little before he left *Ireland*, in a Publick Assembly and Council of the *Irish* at *Lismore*, did cause the *Irish* to Receive, and swear to be Govern'd by the Laws of *England*: *Rex Henricus* (saith he) *antequam ex Hibernia Rediret apud Lismore Consilium Congregavit ubi Leges Angliæ sunt ab omnibus grate receptæ, & Juratoria cautione prestita Confirmatæ, Vid. Matth. Paris, ad An. 1172. Vit. H. 2.* And



And not only thus, but if we may give Credit to Sir Edward Cook, in the 4th Instit. Cap. 1. and 76. and to the Inscription to the *Irish Modus Tenendi Parliamentum*, it will clearly Appear, that Henry the Second did not only settle the the Laws of England in Ireland, and the Jurisdiction Ecclesiastical there, by the *Voluntary Acceptance* and *Allowance* of the Nobility and Clergy, but did likewise Allow them the Freedom of *Holding of Parliaments* in Ireland, as a separate and distinct Kingdom from England; and did then send them a *Modus* to Direct them how to Hold their Parliaments there. The Title of which *Modus* runs thus:

*Irish Modus  
Tenendi Parli-  
amentum.*

“ *Henricus Rex Angliæ Con-*  
 “ *questor & Dominus Hiber-*  
 “ *niæ, &c. Mittit hanc formam*  
 “ *Archiepiscopis, Episcopis,*  
 “ *Abbatibus, Prioribus, Co-*  
 “ *mitibus, Baronibus, Justi-*  
 “ *ciariis, Vicecomitibus, Ma-*  
 “ *joribus, Præpositis, Ministris*  
 “ *& omnibus Fidelibus suis*  
 “ *Terræ Hiberniæ Tenendæ*  
 “ *Parliamentum.* In

*In primis Summonitio Parliamenti præcedere debet per Quadraginta Dies.*

And so forth.

This *Modus* is said to have been sent into Ireland by Hen. II. for a Direction to Hold their Parliaments there. And the sense of it agrees for the most part with the *Modus Tenendi Parl.* in England, said to have been Allowed by William the Conquerour; when he obtain'd that Kingdom; where 'tis alter'd, 'tis only to fit it the better for the Kingdom of Ireland.

I know very well the Antiquity of this *Modus*, so said to be Transmitted for Ireland by Hen. II. is question'd by some Learned Antiquaries, particularly by Mr. Selden <sup>(a)</sup> and <sup>(b)</sup> Mr. Pryn, who deny also the English *Modus* as well as this. But on the other hand, my Lord Chief Justice Cook, in the 4th Instit. pag. 12. and 349. does strenuously Assert them both. And the late Reverend and Learned Dr. Dopping Bishop

(a) Tit. Hon.  
Par. 2. C. 5.

SeH. 26. Edit.  
Lond. An. 1672

(b) Against  
Cook's 4th Instit.  
C. 76.

shop of *Meath*, has Published the *Irish Modus*, with a Vindication of its Antiquity and Authority in the Preface.

There seems to me but two Objections of any Moment raised by Mr. *Pryn* against these *Modi*. The One relates both to the *English* and *Irish Modus*; the other chiefly strikes at the *Irish*. He says the Name *Parliament*, so often found in these *Modi*, was not a name for the great Council of *England* known so early as these *Modi* Pretend to. I confess I am not prepared to Disprove this Antiquary in this Particular: But to me it seems reasonable enough to Imagine that the Name *Parliament*, came in with *William* the Conqueror: 'Tis a Word perfectly French, and I see no reason to doubt it's Coming in with the *Normans*. The other Objection affects our *Irish Modus*, for he tells us, That *Sheriffs* were not establish'd in *Ireland* in *Henry II's* time, when this *Modus* was pretended to be sent hither, yet we find the Word *Vicecomes* therein. To this I can only Answer, That *Hen. II.* intend

intending to Establish in *Ireland* the English form of Government, as the first, and Chief step thereto, he sent them Directions for Holding of Parliaments, Designing afterwards by degrees and in due time to settle the other Constitutions, agreeable to the Model of *England*. If therefore *England* had then *Sheriffs*, we need not wonder to find them named in the *Irish Modus*, tho they were not as yet establish'd amongst us, for they were designed to be appointed soon after, and before the *Modus* could be put regularly in execution; and accordingly we find them establish'd in some Counties of *Ireland* in King *Johns* Time.

This *Irish Modus* is said to have been in the Custody of Sir *Christopher Preston* of *Clane* in *Ireland*, An. 6. Hen. 4. and by Sir *John Talbot* Lord Lieutenant of *Ireland*, under King *Hen. 4.* It was Exemplified by *Inspeximus* under the great Seal of *Ireland*, and the Exemplification was sometimes in the Hands of Mr. *Hackwel* of *Lincolns Inn*, and by him was Communicated to Mr. *Selden*. The Tenor of which Exemplification runs thus.

*Henricus*

*Henricus Dei Gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ, omnibus ad quos presentes; Literæ pervenerint salutem Inspeximus Tenorem Diversorum Articulorum in quodam Rotulo Pergameneo Scriptorum cum Christophero Preston, Milite Tempore Arrestationis suæ apud Villam de Clare, per Deputatum Dilecti & Fidelis nostri Johannes Talbot de Halomshire Chivaler locum nostrum Tenentis Terræ nostræ Hiberniæ, nuper factæ inventorum ac coram nobis & Concilio nostro in eadem terræ nostra apud Villam de Trim. Nono die Januarii ultimo præteriti in hæc verba;*

*“ Modus Tenendi Parliamenta*

*“ Henricus Rex Angliæ, Con-*

*“ questor & Dominus Hiber-*

*“ nia, Mittit hanc formam Ar-*

*“ chiepiscopis, &c. and so as*

*“ before, “ Et omnibus Fideli-*

*“ bus suis Terræ Hiberniæ*

*“ Tenendi Parliamentum Im-*

*“ primis Summonitio, &c. and*

*D*

*then*

then follows the *Modus*, agreeable in most things with that of *England*, only fitted to *Ireland*. Then the Exemplification concludes :

*Nos autem tenores Articulorum prædictorum de Assensu præfati Locum tenentis & Concilii prædicti tenore præsentium duximus Exemplificandum & has Litteras nostras fieri fecimus Patentes. Teste Præfato Locum nostrum tenente apud Trim. 12 dia Januarii Anno Regni nostri sexto.*

*Per ipsum Locum tenentem & Concilium.*

Now we can hardly think it credible, (says the Bishop of *Meath*) that an *Exemplification* could have been made so solemnly of it by King *Henry* the Fourth, and that it should refer to a *Modus* transmitted into *Ireland* by King *Henry* II. and Affirm that it was produced before the Lord Lieutenant and Council at *Trym*, if no such thing had been Done : This were to call in question the Truth of all former Re-

cord



cords and Transactions, and make the Exemplification contain an Egregious Falshood in the body of it.

The Reverend Bishop of *Meath*, in his fore-cited Preface does believe that he had obtain'd the very Original Record, said by my Lord *Cook* to have been in the Hands of Sir *Christopher Preston*: It came to that Learned Prelates Hands amongst other Papers and Manuscripts of Sir *William Domvile*, late Attorney General in this Kingdom, who in his Life-time, upon an occasional Discourse with the Bishop concerning It, told him that this Record was bestow'd on him (Sir *W. Domvile*) by Sir *James Cusse*, late Deputy Vice-Treasurer of *Ireland*, that Sir *James* found it among the Papers of Sir *Francis Aungier*, Master of the Rolls in this Kingdom; and the present Earl of *Longford* (Grandson to the said Sir *Francis Aungier*) told the Bishop, that his said Grandfather had it out of the Treasury of *Waterford*.



Whilst I write this, I have this very Record now before me, from the Hands of the said Bishop of *Meath's* Son, my Nephew, *Samuel Dopping*; and I must confess it has a Venerable Antient Appearance, but whether it be the True Original Record, I leave on the Arguments produced for its Credit by the said Bishop.

Parliaments  
very early in  
*Ireland.*

(a) Against  
the 4th Inst.  
c. 76. p. 249.

This I am sure of, that whether this be the very Record Transmitted hither by King *Henry* the Second, or not; yet 'tis most certain from the Unanimous Concessions of all the fore-mentioned Antiquaries, *Cook, Selden, Pryn, &c.* That we have had Parliaments in *Ireland* very soon after the Invasion of *Henry II.* For *Pryn* confesses that (a) King *Hen. II.* after his Conquest of *Ireland*, and the General Voluntary Submission, Homages, and Fealties of most of the *Irish* Kings, Prelates, Nobles, Cities and People, to him, as to their Sovereign Lord and King, *Anno 1170*, (it should be 1172.) held therein a General Council of the Clergy at

at *Cashal*, wherein he Rectify'd many Abuses in the Church, and Establish'd sundry Ecclesiastical Laws, agreeable to those in the Church of *England*; *Ecclesiæ illius statum ad Anglicanæ Ecclesiæ formam Redigere Modis omnibus elaborando*; To which the *Irish* Clergy promis'd Conformity, and to observe them for time to come, as

(a) *Giraldus Cambrensis*, who was then in *Ireland*, and other (b) *Hist*o-  
ans, relate; *Et ut in singulis Obser-*  
*vatio similis Regnum Colligaret*  
*utrumque* (that is *England* and *Ire-*  
*land*) *passim omnes unanimi voluntate*  
*communi Assensu, Pari desiderio Re-*  
*gis imperio se subjiunt, omnibus*  
*igitur hoc modo Consummatis, in Con-*  
*cilio habito apud Lismore Leges An-*  
*gliæ ab omnibus sunt gratantur recep-*  
*tæ, & juratoriâ cautione præstitâ Con-*  
*firmatæ*, says *Math. Paris*.

(a) *Togograph*  
*Hibern. l. 3. c. 18*

*Hib. Expug.*

*l. 11. c. 33, 34.*

(b) *Hoveden*

*Annal pars-*

*post. p. 302.*

*Brampton Chr.*

*Col. 1071.*

*Knighion de*

*Even. Angl.*

*l. c. c. 10 col.*

*2394, 2395.*

*Pol. Virg. Hist.*

*Angl. l. 13.*

*Radul. de Di-*

*ceto.*

*Walsingham,*

*&c.*

Can any Concession in the World be more plain and free than this? We have heard of late much Talk in *England* of an Original Compact between the King and People of *England*; I am sure 'tis not possible to shew a more fair Original

Original Com-  
pact for *Ire-*  
*land.*

*nal Compact between a King and People, than this between Henry the Second, and the People of Ireland, That they should Enjoy the like Liberties and Immunities, and be Govern'd by the same Mild Laws, both Civil and Ecclesiastical, as the People of England.*

From all which, It is manifest that there were no Laws Imposed on the People of Ireland, by any Authority of the Parliament of England; nor any Laws introduced into that Kingdom by Henry the Second, but by the Consent and Allowance of the People of Ireland: For both the Civil and Ecclesiastical State were settled there *Regiæ sublimitatis Autoritate*, solely by the Kings Authority, and their own good Wills, as the Irish Statute, 11 Eliz. c. 1. expresses it. And not only the Laws of England, but the manner of Holding Parliaments in Ireland to make Laws of their own (which is the Foundation and Bulwark of the Peoples Liberties and Properties) was Directed and Established there by Henry the Second, as if he were Resolved

tha

that no other Person or Persons should be the Founders of the Government of *Ireland*, but himself and the *Consent* of the People, who submitted themselves to him against all Persons whatsoever.

Let us now see by what farther Degrees the Government of *Ireland* grew up Conformable to that of *England*.

About the Twenty-third year of *Henry* the Second, (which was within Five years after his Return from *Ireland*) he created his younger Son *John*, *King of Ireland*, at a Parliament held at *Oxford*. Soon after *King John* being then about Twelve Years of Age, came into *Ireland*, from *Milford* to *Waterford*, as his Father had formerly done. The *Irish* Nobility and Gentry immediately repaired to him ; but being Received by him and his Retinue with some Scorn and Derision, by reason of their long rude Beards, *quas more Patrio grandes habebant & prolixas*, (says *Giraldus Cambrensis, Hib. Expug. Cap. 35.*) they took such Offence

*King John*  
made King of  
*Ireland*.

thereat, that they departed in much Discontent ; which was the occasion of the young Kings staying so short a time in *Ireland*, as he did this his first time of being here.

By this *Ireland*  
made an Absolute  
separate  
Kingdom.

And here, before we proceed any farther, we shall observe, That by this Donation of the *Kingdom* of *Ireland* to *King John*, *Ireland* was most eminently set apart again, as a *Separate* and *Distinct Kingdom* by it self from the *Kingdom* of *England*; and did so continue, until the *Kingdom* of *England* Descended and came unto *King John*, after the Death of his Brother *Richard* the First, King of *England*, which was about Twenty two years after his being made King of *Ireland*; during which space of Twenty two years, both whilst his Father *Henry* the Second, and his Brother *Richard* the First, were living and Reigning, *King John* made divers Grants and Charters to his Subjects of *Ireland*, which are yet in being in this Kingdom ; wherein he stiles himself *Dominus Hiberniæ*, (the constant Stile till *Henry* the Eighth's time)

time) and in others, *Dominus Hiberniæ & Comes Meritoniae*. By which Charters both the City of *Dublin*, and divers other Corporations enjoy many Priviledges and Franchises to this day. But after the said Grant of the Kingdom of *Ireland* to King *John*, neither his Father *Henry II.* nor his Brother King *Richard I.* Kings of *England*, ever stiled themselves, during their Lives, *King* or *Lord* of *Ireland*; for the *Dominion* and *Regality* of *Ireland* was wholly and separately vested in K. *John*, being absolutely Granted unto him without any Reservation. And he being Created King in the Parliament at *Oxford*, under the Stile and Title of *Lord of Ireland*, Enjoy'd all manner of *Kingly Jurisdiction*, *Preheminence*, and *Authority Royal*, belonging unto the *Imperial State* and *Majesty of a King*, as are the Express words of the *Irish Statute*, 33 *Hen. VIII. c. 1.* by which Statute the Stile of *Dominus* was changed to that of *Rex Hiberniæ*.

Let us then suppose that *Richard* the First, King *John's* Elder Brother,



Brother, had not died without Issue, but that his Progeny had sat on the Throne of *England*, in a Continued Succession to this Day; Let us suppose likewise the same of King *John's* Progeny, in relation to the Throne of *Ireland*; where then had been the *Subordination* of *Ireland* to the *Parliament*, or even to the *King* of *England*? Certainly no such thing could have been then pretended: Therefore if any such *Subordination* there be, it must arise from something that followed *after* the Descent of *England*, to King *John*; for by that Descent *England* might as properly be *Subordinate* to *Ireland*, as the converse; *Ireland* being vested in the Royal Person of King *John*, Two and Twenty years before his Accession to the Crown of *England*, and being a more *Ancient Kingdom* than the Kingdom of *England*. As the English Orators in the Council of Constance, *An.* 1417

(a) confess'd and alledged, as an Argument in the Contest between Henry the Fifth's Legates, and those of Charles the Sixth King of France, for *Precedence*: *Satis Constat* (say they)

(a) Seldens Tit.  
Hon. Par. I. C. 8  
Sect. 5.  
Usher Archbi-  
shop of Ar-  
magh, of the  
Religion of  
the Antient  
Irish, Cap. II.



they ) (b) *secundum Albertum Magnum & Bartholomeum de Proprietatibus Rerum, quod toto Mundo in tres partes Diviso, scilicet in Europam, Asiam & Africam* ( for America was not then Discovered ) *Europa in quatuor Dividitur Regna scilicet, Primum Romanum, Secundum Constantinopolitanum, Tertium Regnum Hiberniæ ( quod jam translatum est in Anglos ) & Quartum Regnum Hispaniæ. Ex quo patet, quod Rex Angliæ & Regnum suum sunt de Eminentioribus Antiquioribus Regibus & Regnis totius Europæ.* The Antiquity and Precedence of the King of England, was allo'wd him wholly on the Account of his Kingdom of Ireland.

(b) *Act. Concil. Constant. Sess. 28. MS. in Bib. Reg. not in the Printed Acts.*

Perhaps it will be said, That this Subordination of the Kingdom of Ireland, to the Kingdom of England, proceeds from Ireland's being Annex'd to, and as it were united with the Imperial Crown of England, by several Acts of Parliament both in England and Ireland, since King Johns time. But how farr this Operates, I shall Enquire more fully hereafter ; I shall only at present Observe, that I conceive little more

*Ireland in what sense Annex'd to England.*

more is Effected by these Statutes Than that *Ireland* shall not be *Alien'd* or *Separated* from the King of *England*, who cannot hereby dispose of it otherwise than in *Legal Succession* along with *England*; and that whoever is *King of England*, is *ipso facto King of Ireland*, and the Subjects of *Ireland* are oblig'd to Obey him as their Liege Lord.

King John  
comes a second  
time into Ire-  
land.  
The People  
submit to him

To proceed therefore. After both Crowns were united, on the Death of *Richard* the First without Issue, in the Royal Person of King *John*: He, about the Twelfth Year of his Reign of *England*, went again into *Ireland*, viz. the Twenty Eight day of *June*, 1210. and *Math. Paris* tells us, pag. 220. *Cum Venisset ad Dublinensem Civitatem Occurrerunt ei ibidem plus quam 20 Reguli illius Regionis qui omnes Timore maximo preterriti homagium ei & Fidelitatem fecerunt. Fecit quoque Rex ibidem, Construere Leges & Consuetudines Anglicanas, ponens Vicecomites aliosque Ministros, qui populum Regni illius juxta Leges Anglicanas Judicarent.*

His Son King Henry the Third <sup>Concessit. 3</sup>  
came to the Crown the Nineteenth <sup>from Hen. III.</sup>  
of October 1216. and in Novem-

ber following he Granted to Ireland  
a Magna Charta, Dated at Bristol  
12 November, the First Year of his  
Reign. 'Tis Prefaced, *that for the  
Honour of God, and Advancement of  
Holy Church, by the Advice of his  
Council of England, (whose names  
are particularly recited) He makes  
the following Grant to Ireland; And  
then goes on Exactly Agreeable to  
the Magna Charta which he granted  
to England; only in ours we have  
Civitas Dublin, & Avenliffce, instead  
of Civitas London, and Thamesis with  
other Alterations of the like kind  
where Needful. But ours is Eight  
years older than that which he grant-  
ed to England, it not being till the  
Ninth Year of his Reign, and ours  
is the First Year. This Magna Char-  
ta of Ireland Concludes thus, Quia  
vero sigillum nondum habuimus pre-  
sentem Cartam Sigillis Venerabilis  
Patris nostri Domini Gualt. Apost.  
Sedis Legati & Willelmi Mareſchalli  
Comitis Pembroke Rectoris nostri &  
Regni nostri fecimus Sigillari. Testi-  
bus omnibus prænominatis & alijs  
Multis Dat per Manus Prædictorum*

*Dominz*

*Domini Legati & Willelmi Mareſcal-  
li. Apud Briſtol Duodecimo die No-  
vembr. Regni noſtri Anno Primo.*  
An Antient Coppy of this *Magna  
Charta of Ireland* is to be found in  
the *Red Book* of the *Exchequer  
Dublin.*

(2) *Pryn* againſt  
the 4th Inſt..  
c. 76. p. 250.

In *February* following in the *First*  
Year likewiſe of his Reign, by Ad-  
vice of all his Faithful Counſellors  
in *England*, to gratify the *Irish* (ſays  
(a) *Pryn*) for their eminent Loyalty  
to his Father and Him, he granted  
them out of his *Special Grace*,  
that they and their Heirs for ever  
ſhould enjoy the *Liberties* granted  
by his Father and Himſelf to the  
Realm of *England*; which he Re-  
duced into Writing, and ſent Seal'd  
thither under the Seal of the Popes  
Legat, and W. Earl Marſhal his  
Governour, becauſe he had then no  
Seal of his own. This as I con-  
ceive Refers to the foremention'd  
*Magna Charta Hiberniæ*. The Re-  
cord as Recited by Mr. *Pryn*, here  
follows.

" Rex Archiepiscopis, Epif- *Pa. 1 H.III.*  
 " copis, Abbatibus, Comiti- *m. 13. intus,*  
 " bus, Baronibus, Militibus  
 " & Libere Tenentibus, &  
 " omnibus Fidelibus suis per  
 " Hiberniam Constitutis, Sa-  
 " lutem: Fidelitatem vestram  
 " in Domino Commendantes  
 " quam Domino Patri nostro  
 " semper Exhibuistis & nobis  
 " estis diebus nostris Exhibi-  
 " turi: Volumus quod in  
 " signum Fidelitatis vestræ,  
 " tam præclaræ, tam Insignis  
 " Libertatibus Regno nostro  
 " Angliæ a Patre nostro & no-  
 " bis Concessis, de gratia no-  
 " stra & Dono in Regno no-  
 " stro Hiberniæ guadeatis vos  
 " & vestri Hæredes in perpe-  
 " tuum. Quas Distincte  
 " in Scriptum Reductas de  
 " Communi Consilio omni-  
 " um Fidelium nostrorum vo-  
 " bis Mittimus Signatas Si-  
 " gillis Domini nostri G. Apo-  
 " stolicæ Sedis Legati & Fi-  
 " delis nostri Com. W. Ma-  
 " resc. Rectoris nostri & Reg-  
 " ni nostri quia Sigillum non-  
 " dum

“ dum habuimus; eadē  
 “ processu temporis de Majori  
 “ Consilio proprio Sigillo Sig-  
 “ naturi.

Teste apud Glouc. 6 Februar.

Here we have a free Grant of all the *Liberties of England* to the *People of Ireland*. But we know the *Liberties of Englishmen* are Founded on that *Universal Law of Nature*, that ought to prevail throughout the whole World, of *being Govern'd only by such Laws to which they give their own Consent by their Representatives in Parliament*.

Record out of  
 Mr. Petyt of  
 the Antiquity  
 of Parliaments  
 in Ireland.

And here, before I proceed farther, I shall take Notice, That in the late Raised Controversie, *Whether the House of Commons were an Essential part of Parliament*, before the 49th year of *Henry the Third*; The Learned Mr. Petyt, Keeper of the Records in the *Tower*, in his Book on that Subject, pag. 71. Deduces his 9th Argument *From the Comparison of the Antient Generale Concilium, or Parliament of Ireland,*



land, instanced *An. 38 Hen. III.* with the Parliament in England, wherein the Citizens and Burgesſes were ; which was Eleven years before the pretended beginning of the Commons in England.

For thus we find it in that Author.

“ As great a Right and Privilege  
 “ ſurely was and ought to be al-  
 “ low’d to the *Engliſh* Subjects, as  
 “ to the *Iriſh*, before the 49th of  
 “ *Hen. III.* And if that be admit-  
 “ ted, and that their (the *Iriſh*)  
 “ *Commune Concilium*, or Parliament,  
 “ had its Platform from ours (the  
 “ *Engliſh*) as I think will not be  
 “ Deny’d by any that have conſi-  
 “ der’d the Hiſtory and Records  
 “ touching that Land (*Ireland*) we  
 “ ſhall find the enſuing Records,  
 “ *Ann. 38 Hen. III.* clearly evince  
 “ that the Citizens and Burgeſſes  
 “ were then a part of their (the  
 “ *Iriſh*) Great Council or Parlia-  
 “ ment.

“ That King being in *partibus Rot. 38 H. III.*  
 “ *Transmarinis*, and the Queen being in *4. Hibernia*  
 “ left Regent, ſhe ſends Writs (or a

E

“ Let-

" Lötter) in the Kings Name, di-  
 " rected *Archiepiscopis, Episcopis,*  
 " *Abbatibus, Prioribus, Comitibus,*  
 " *Baronibus, Militibus, Liberis Ho-*  
 " *minibus, Civibus & Burgensi-*  
 " *bus, Terræ suæ Hiberniæ ;* tell-  
 " ing them that, *Mittimus Fratrem*  
 " *Nicholaum de Sancto Neoto, Fratrem*  
 " *Hospitii Sancti Johannis Jerusa-*  
 " *lem in Anglia ad partes Hiberniæ*  
 " *ad exponendum vobis* (together  
 " with J. Fitz-Geoffery the Kings  
 " Justice) the State of his Land of  
 " *Vascony,* endanger'd by the Ho-  
 " stile Invasion of the King of Ca-  
 " stile, *qui nullo Jure sed potentia*  
 " *sua Confisus Terram nostram Vas-*  
 " *conia per ipsius Fortitudinem,*  
 " *a manibus nostris Auferre & a Do-*  
 " *minio Regni Angliæ segregare Pro-*  
 " *ponit.* And therefore *universita-*  
 " *tem Vestram Quanta possumus Af-*  
 " *fectione Rogantes* quatenus nos  
 " & *jura nostra totaliter indefensa*  
 " *non deserentes nobis in tanto peri-*  
 " *culo quantumcunque poteritis de*  
 " *Gente & Pecunia subveniat;*  
 " which would turn to their Ever-  
 " lasting Honour ; concluding  
 " *His nostris Augustiis taliter Comp-*  
 " *tientes, quod nos & Heredes n-*  
 " *stra*

" *stri vobis & Hæredibus vestris su-*  
 " *mus non immerito Obligati. Te-*  
 " *ste Regina, & R. Comite Cornubiæ,*  
 " *apud Windesfor, 17 die Februar.*

*Per Reginam.*

Thus far Mr. Petyt.

Here we have a Letter from the Queen Regent to the *Parliament* in *Ireland*, in an humble manner beseeching them for an Aid of *Men* and *Money* against the King of *Castiles* Hostile Invasion of *Gascony*; from whence we may perceive that in those days, no more than at present, *Men* and *Money* could not be Rais'd but by *Consent of Parliament*. I have been the more particular in Transcribing this Passage out of Mr. Petyt, to shew that we have as Antient and Express an Authority for our present Constitution of Parliaments in *Ireland*, as can be shewn in *England*. And I believe it will not be thought Adviseable in these latter Days, to break in upon *Old Settled Constitutions* : No

one knows how fatal the Consequents of that may be.

Farther Con-  
cessions from  
*Hen. III.*

To return therefore where we Digress'd. *Henry* the Third, about the Twelfth year of his Reign, did specially Impower *Richard de Burgh*, then *Justice of Ireland*, at a certain day and place, to summon all the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders and Sheriffs of each County, and before them to cause to be Read the Charter of his Father King *John*, whereunto his Seal was Appendant, whereby he had granted unto them the *Laws and Customs of England*, and unto which they swore Obedience: And that he should cause the same Laws to be observed and Proclaimed in the several Counties of *Ireland*, that so none presume to do contrary to the Kings Command. The Record I have taken out of Mr. (a) *Pryn*, in these words:

(b) Against  
*Cook's* 4th In-  
stit. p. 252.

*Claus. 12 H. III*  
*in 8 de Legibus*  
O Conjuetu-  
dimibus Obser-  
vandis in Hi-  
bern.

“ Rex Dilecto & Fideli suo  
“ Richardo de Burgo Justie  
“ suo Hibern. Salutem. Man-  
“ damus vobis firmiter præ-  
“ cipientes

" cipientes quatenus certo die  
 " & Loco faciatis venire co-  
 " ram vobis Archiepiscopos  
 " Episcopos Abbates Priores  
 " Comites & Barones Milites  
 " & libere Tenentes & Balli-  
 " vos singulorum Comitatum  
 " & coram eis Publice legi  
 " faciatis Chartam Domini J.  
 " Regis Patris nostri cui Si-  
 " gillum suum appensum est  
 " quam fieri fecit & jurari a  
 " Magnatibus Hibern. de Le-  
 " gibus & Consuetudinis An-  
 " glia Observandis in Hiber-  
 " nia. Et præcipiatis eis ex  
 " parte nostra quod Leges il-  
 " las & Consuetudines in  
 " Charta prædicta contentas  
 " de cætero firmiter teneant &  
 " observent & hoc idem per  
 " singulos Commitatus Hi-  
 " bernia clamari faciatis &  
 " teneri prohibentes firmiter  
 " ex parte nostra & super foris  
 " facturam nostram nequis  
 " contra hoc Mandatum no-  
 " strum venire præsumat, &c.  
 " *Teste Me ipso Apud Westm' 8*  
 " *die Maii An. Reg. nostri 12.*

By what foregoes, I presume it plainly appears, that by three several Establishments under the three first Kings of *Ireland* of the *Norman Race*, the *Laws and Liberties of the People of England*, were granted to the *People of Ireland*. And that neither of these three Kings Established those *Laws in Ireland* by any *Power of the Parliament of England*, but by the free *Consent, Allowance and Acceptance* of the *People of Ireland*.

Recapitulation.

*Hen. II.* first introduced the *Laws of England* into *Ireland*, in a *Publick Assembly of the Irish at Lismore*, and Allowed them the *Freedom of Parliaments* to be held in *Ireland*, as they were held in *England*.

*King John* at the *Request*, and by the *Consent of the Irish*, did appoint the *Laws of England* to be of *Force in Ireland*; and tho' he did not this till the *Twelfth year* of his *Reign of England*, yet he did it not as *King of England*, but as *Lord of Ireland*: For the *Crown of England* came to him by *Descent* from



from his Brother *Richard*, who had  
no *Regal Power* in *Ireland*; and  
what his Brother had not, could  
not descend to him,

*Henry* the Third in the first year  
of his Reign gave *Ireland* a *Magna  
Charta*; and in the Twelfth year  
of his Reign did provide, That all  
the Laws of *England* should be  
observ'd in *Ireland*; and that the  
Charter granted to the *Irish* by his  
Father *King John* under his Seal,  
when he was in that Kingdom,  
should be kept inviolably.

And from the Days of these  
Three Kings, have *England* and  
*Ireland* been both Govern'd by the  
like Forms of Government under  
one and the same Supreme Head,  
the *King of England*; yet so, as  
both Kingdoms remain'd Separate  
and Distinct in their several Juris-  
dictions under that *One Head*, as  
are the Kingdoms of *England* and  
*Scotland* at this day, without any  
*Subordination* of the One to the  
Other.

It were endless to mention all

Records and Precedents that might be quoted for the Establishment of the Laws of *England in Ireland*; I

(a) *Fourth Instit.*

(b) *Against the 4th Instit.*

(c) *Placita Parliamentaria.*

*English Laws Established in Ireland.*

*Law of Parliament.*

shall therefore enter no farther into that Matter, but therein refer to Lord Chief Justice Cook, (a) *Pryn*, (b) *Reyly*, (c) *&c.*

If now we Enquire, *What were those Laws of England that became thus Established in Ireland?* Surely we must first reckon the Great Law of *Parliament*, which *England* so justly Challenges; and all Mankind have a Right to. By the Law of *Parliament*, I mean that Law whereby all Laws receive their Sanction, *The Free Debates and Consent of the People, by themselves, or their Chosen Representatives.* That this was a main Branch of the *English Law Established in this Kingdom*, and the very Foundation of our Future Legislature, appears manifest from *Parliaments* being so early contriv'd in *Ireland*, as the fore-mention'd Precedents express.

Mr. *Pryn* acknowledges one in *Hen. II's* time, (*pag. 259. against the 14th Instit.*) but makes a very false  
Conclu-

Conclusion, that there appears no Footsteps of a Parliament afterwards, till the third year of *Edward* the Second, because the Acts of that Parliament are the first that are Printed in our Irish Statute-Book : For so we may argue the Parliaments of *England* to be of later Date than pretended, when we find the first Printed Acts in *Keeble* to be no older than the 9th of *Hen. III.* Whereas 'tis most certain, that Parliaments have been held in *England* some Ages before that.

20 After this *Great Law of Parliaments*, we may reckon the *Common Law of England*, whether it relates to Regulating and Setling of *Property*, and Estates in Goods or Land, or to the *Judiciary* and *Executive* parts of the Law, and the Ministers and Process thereof, or to *Criminal* Cases. These surely were all Establish'd in this Country, by the three first Kings of *Ireland* of the *Norman Race*.

21 Let us now consider the state of *Statute Law*, the *Statute Laws* of *England* under these

these three Kings, and their Predecessors: For by the Irish Voluntary Submission to, and Acceptance of the Laws and Government of *England*, we must repute them to have submitted themselves to these likewise; till a Regular Legislature was Establish'd amongst them, in pursuance of that Submission and Voluntary Acceptance.

Statute-Law  
of *England*  
from the Nor-  
man Conquest  
to *Hen. III.*

And here we shall find, that in those Times, viz. from the *Norman Conquest* to *Henry the Third's* time inclusive, the Statute-Laws of *England* were very few and slender. 'Tis true, that before the 12th of *Hen. III.* we find amongst the English Historians frequent mention of the Laws of *Edward the Confessor*, *William the Conquerour*, *Hen. I.* *Hen. II.* *King John*, and *Hen. III.* All which are only *Charters*, or several Grants of *Liberties* from the King; which nevertheless had the force of Acts of Parliament, and laid as great Obligations both upon Prince and People, as Acts of Parliament do at this day: Whereof we may read several Proofs in the *Princes Case*, *Cook's 8th Report.* But these were only

only so many Confirmations of each other, and all of them Sanctions of the Common Laws and Liberties of the People of England, *ab Antiquo Usitatae & comprobatae per totam terram & in quibus ipsi & eorum Patres nati & nutriti sunt*, as the words of the Manuscript Chronicle of Litchfield express it.

The Laws of Edward the Confessor, held in so great Veneration in Antient Times, & per universum Regnum corroboratae & confirmatae, prius inventae & Constitutae fuerunt Tempore Regis Edgari Avi sui. Verum tamen post mortem ipsius Regis Edgari, usque ad Coronationem Sancti Regis Edwardi ( which was 67 years ) praedictae Leges sopitae sunt & penitus intermissae. Sed postquam Rex Edwardus in Regno sublimatus fuit Consilio Baronum Angliae Legem illam sopitam Excitavit, Excitam Reparavit, Reparatam Decoravit, Decoratam Confirmavit; & confirmatae vocantur Lex Sancti Regis Edwardi, non quod ipse primus eam ad invenisset; sed quod Reparavit, Restituitque, (a) as the said Litchfield Chronicle has it. These Laws

Law of Edward the Confessor.

(a) Selden Notae & Specileg. ad eadmerum, Of pag 171

of *Edward the Confessor* were transcribed by *Ingulphus Abbot of Croyland* under *William the Conqueror*, and are annexed to his History.

Of *W. Conq.*

The Laws of *William the Conqueror* are but a Confirmation of the Laws of *Edward the Confessor*, with some small alterations, as the very Letter of those Laws themselves express it. (b) *Hoc quoque præcipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus Rebus adauctis his quas constituimus ad Utilitatem Anglorum.*

(b) *Leges W. i. Cap. 63. apud Selden in notis ad eadmerum p. 192.*

Of *Hen. I.*

The Laws of *Henry I.* which are in the *Red Book of the Exchequer*, in the custody of the Kings Remembrancer in England, are but a summary confirmation both of the Laws of *Edward the Confessor* and *William the First*, as the Charter it self expresses it, (c) *Lagam Regis Edwardi vobis Reddo cum illis emendationibus quibus Pater meus emendavit Consilio Baronum suorum.*

(c) *Vid. Selden ut supra.*

Of *Hen II.*

The Laws of *Henry II.* called *Constitutiones Clarendoniæ*, and the *Affize of Clarendon* in the 2<sup>d</sup> part of  
Cooks



*Cooks Inst.* p. 6. are all but confirmations and vindications of the King's just Prerogative against the Usurpations of the Pope and Clergy: As we find at large in *Chron. Gervassii. Doroborn* p. 1387. Edit. Lond. an. 1652.

The Laws of *King John*, called *of K. John.*  
*The Great Charter of King John*, granted in the 17th Year of his Reign, upon the Agreement made between him and his Barons at *Running-Mead* between *Staines* and *Windsor*, was but a Confirmation of the Laws of *Edward the Confessor* and *Henry the First*, as (d) *Mat.* (d) Mat. Paris ad an. 1215. pag. 253, &c.  
*Paris* relates it. *Anno Regis Johannis 17. venientes ad Regem magnates petierunt quasdam Libertates & Leges Regis Edwardi cum aliis libertatibus sibi & Regno Angliæ & Ecclesiæ Anglicanæ concessis confirmari prout in Charta Regis Hen I. ascriptæ continentur.* The same Historian gives us also at large both *Charta Libertatum*, and *Charta de Foresta*, which are not extant in the Rolls of those times, nor to be found in any till the 28th of *Edward I.* and that but by *inspeximus.*

The,

Of Hen. III.

The Laws of *Henry III.* contain'd in *Magna Charta* and *Charta de Foresta*, both which are called *Magnæ Chartæ Libertatis Angliæ*, and were establish'd about the 9<sup>th</sup> Year of *Henry III.* are for the most part but *declaratory* of the common municipal Laws of *England*, and that too no *new* declaration thereof; for King *John* in the 17<sup>th</sup> year of his Reign had granted the like before, which was also call'd *Magna Charta*.

(a) Cook's Pref.  
to the 2d Inst.

(a) And by the English Statute 25 Ed. I. c. I. it is Enacted, That the *Great Charter*, and the *Charter of the Forrest* be taken as the *Common Law of England*.

By what foregoes, I conceive, it is very clear, That all the *Charters* and *Grants of Liberties* from *Edward the Confessor's* time down to the 9<sup>th</sup> of *Henry the Third* were but *Confirmations* one of another, and all of them *Declarations*, and *Confirmations* of the *Common Law of England*. And by the several *Establishments*, which we have formerly mention'd, of the Laws of *England* to be of force in *Ireland*:  
First

First, in the 13<sup>th</sup> of *Henry II.* Secondly in the 12<sup>th</sup> of *King John.* Thirdly, in the 12<sup>th</sup> of *Henry III.* All those Laws and Customs of *England*, which by those several Charters were *Declared* and *Confirmed* to be the Laws of *England*, were establish'd to be of force in *Ireland.* And thus *Ireland* came to be govern'd by one and the same *Common Law* with *England*; and those Laws continue as part of the municipal and fundamental Laws of both Kingdoms to this day.

It now remains that we enquire, How the *Statute Laws* and *Acts of Parliament* made in *England* since the 9<sup>th</sup> of *Henry the Third* came to be of force in *Ireland*; And whether all or any of them, and which, are in force here, and when and how they came to be so.

Engl. Statutes since the 9<sup>th</sup>. Hen. III. introduced in Ireland.

And the first Precedent that occurs in our Books, of Acts of Parliament in *Ireland* particularly mentioning and confirming special Acts of Parliament in *England*, is found in a Marginal Note of *Sir Richard Bolton's* formerly Lord Chief Baron of

Statutes of  
Merton.  
Marlebr.  
Westm.  
Gloucester.

Vid. Lib. Rubr.  
Statutar. Dubl.

of the *Exchequer* in *Ireland*, affixed in his Edition of the *Irish Statutes* to Stat. 10 *Hen.* 7. Cap. 22. to this purport, That in 13 *Edw.* II. by *Parliament* in this *Realm* of *Ireland* the *Statutes* of *Merton*, made the 20th of *Hen.* II. and the *Statutes* of *Marlbridge*, made the 52 of *Henry* the Third; The *Statute* of *Westminster* the First, made the 3d of *Edward* the First; The *Statute* of *Gloucester*, made the 6th of *Edward* the First; And the *Statute* of *Westminster* the Second, made the 13th of *Edward* the First, were all confirm'd in this *Kingdom*, and all other *Statutes* which were of force in *England*, were referr'd to be *Examin'd* in the next *Parliament*; and so many as were then *Allow'd* and *Publish'd*, to stand likewise for *Laws* in this *Kingdom*. And in the 10th of *Henry* the Fourth, it was *Enacted* in this *Kingdom* of *Ireland*, That the *Statutes* made in *England* should not be of force in this *Kingdom*, unless they were *Allow'd* and *Publish'd* in this *Kingdom* by *Parliament*. And the like *Statute* was made again in the 29th of *Henry* the Sixth. These *Statutes* are not to be found in the *Rolls*,

Rolls, nor any Parliament Roll of that time; but he (Sir Richard Bolton) had seen the same Exemplification under the Great Seal, and the Exemplification remaineth in the Treasury of the City of Waterford. Thus far the Note.

If we consider the frequent Troubles and Distractions in Ireland, we shall not wonder that these, and many other Rolls and Records, have been lost in this Kingdom: For from the third year of Edward the Second, which was Anno 1310. through the whole Reigns of Edward III. Richard II. Henry IV. and Henry V. and so to the Seventh year of Henry the Sixth, Anno 1428. which is about 118 years, there are not any

(a) Annals of Ireland, at the End of Camden's Britan. Edit. 1637.

page 196, 197, &c.

(b) Ibid. p. 160. Pryn against the 4th Instit. Chap. 76.

Parliament Rolls to be found; yet certain it is, that divers Parliaments were held in Ireland in those times. (B) The same may be said from Henry the Second's coming into Ireland, Anno 1172. to the third year of Edward the Second, Anno 1310. about 138 years.

Perhaps it may be said, That if there were such Statutes of Ireland as the said Acts of the 10th of

*Henry the Fourth, and the 29th of Henry the Sixth; As they shew, that the Parliaments of Ireland did think that English Acts of Parliament could not bind Ireland; yet they shew likewise, that even in those days the Parliaments of England did claim this Superiority; or else, to what purpose were the said Acts made, unless in denial of that Claim?*

All which I hope may be readily granted without any prejudice to the Right of the Irish Parliaments: There is nothing so common, as to have one Man claim another Mans Right: And if bare Pretence will give a Title, no Mans is secure: And it will be yet worse, if when another so Pretends, and I insist on my Right, my Just Claim shall be turn'd to my Prejudice, and to the Disparagement of my Title.

We know very well that many of the Judges of our Four Courts have been from time to time sent us out of *England*; and some of them may easily be supposed to

come



come over hither *Preposseſs'd* with an Opinion of our Parliaments being subordinate to that of *England*. Or at least, some of them may be *Scrupulous*, and desirous of full *Security* in this Point; and on their Account, and for their Satisfaction, such Acts as aforesaid, may be devised, and Enacted in *Ireland*. But then, God forbid, that these Acts should afterwards be laid hold of to a clear other intent than what they were framed for; and instead of Declaring and Securing our Rights, should give an Handle of Contest, by shewing that our Rights have been question'd of Antient Time.

In conclusion of all, If this *Superiority* of the Parliament of *England* have been Doubted a great while ago, so it has been as great a while ago *Strenuously Opposed*, and Absolutely Denied by the Parliaments of *Ireland*. And by the way, I shall take Notice, That from whenceſoever this Antient Pretence of *Ireland's Subordination* proceeded in those days, it did not arise from the Parliament of *Eng-*  
land

land it self: For we have not one single Instance of an English Act of Parliament *Expresly Claiming* this Right of Binding us: But we have several Instances of Irish Acts of Parliament, *Expresly Denying* this *Subordination*, as appears by what foregoes.

Afterwards by a Statute made in Ireland the 18th of *Hen. VI. Cap. 1.* All the Statutes made in *England* against the *Extortions* and *Oppressions* of *Parveyors*, are Enacted to be holden and kept in all Points, and put in Execution in this Land of Ireland.

And in the 32d year of *Henry the Sixth, Cap. 1.* by a Parliament in *Ireland*, 'tis Enacted, That all the Statutes made against *Provisors* to the Court of *Rome*, as well in *England* as in *Ireland*, be had and kept in force.

After this, in a Parliament at *Drogheda* the 8th of *Edward IV. cap. 1.* it was Ratify'd, That the *English* Statute against *Rape*, made the 6th of *Richard the Second*, should

should be of Force in Ireland from the 6th day of March last past: And that from henceforth the said Act, and all other Statutes and Acts made by Authority of Parliament within the Realm of England, be Ratify'd and Confirm'd, and Adjudg'd by the Authority of this Parliament in their Force and Strength, from the said sixth day of March. We shall hereafter have occasion of taking farther Notice of this Statute upon another Account.

Lastly, In a Parliament held at Drogheda the 10th of Henry the Seventh, cap. 22. it is Enacted, That all Statutes late (that is, as the Learned in the Laws expound it, before that time) made in England, concerning the Common and Publique Weal of the same, from henceforth be Deem'd effectual in Law, and be Accepted, Used and Executed within this Land of Ireland in all Points, &c.

All English Statutes before the 10th of Hen. VII. in force in Ireland. (a) Cook's 4th Instit. Cap. 76. P. 351.

(b) And in the 14th year of the same Kings Reign, in a Parliament held at Tristle-Dermot, it was Enacted, That all Acts of Parliament

(b) Vid. Irish Stat.

made in *England* for Punishing *Customs, Controulers, and Searchers*, for their Misdemeanors ; or for Punishment of *Merchants or Factors*, be of Force here in *Ireland*, *Provided* they be first Proclaim'd at *Dublin, Drogheda, and other Market-Towns*.

Thus we see by what Steps and Degrees all the Statutes which were made in *England* from the time of *Magna Charta*, to the 10th of *Henry the Seventh*, which did concern the Common Publick Weal, were Receiv'd, Confirm'd, Allow'd, and Authoriz'd to be of Force in *Ireland* ; all which was done by Assent of the *Lords Spiritual and Temporal*, and the *Commons* in the *Parliament of Ireland* Assembled, and no Otherwise.

English Statutes Declaratory of the Common Law in force in *Ireland*.

We shall next Enquire, Whether there are not other Acts of the English Parliament, both before and since the 10th of *Henry the Seventh*, which were and are of Force in *Ireland*, tho' not Allow'd of by Parliament in this Kingdom. And we shall find, That by the Opini-

on of our best Lawyers, *there are divers such*; but then they are only such as are *Declaratory* of the *Antient Common Law* of England, and not *introductive* of any *New Law*; For these become of Force by the first *General Establishment* of the *Common Laws* of England in this Kingdom, under *Henry the Second*, *King John*, and *Henry the Third*; and need no particular Act of *Ireland* for their Sanction.

As to those English Statutes since the 10th of *Henry the Seventh*, that are *Introductive* of a *New Law*, it was never made a Question whether they should Bind *Ireland*, without being Allow'd in Parliament here; till of very late years this Doubt began to be moved; and how it has been Carried on and Promoted, shall Appear more fully hereafter.

English Acts  
introductive  
of a New Law,  
not of force  
in Ireland.

I say, *Till of very late years*; for the *Antient Precedents* which we have to the contrary, are very numerous. Amongst many, we shall mention the following Particulars.

In the 21th of Henry the 8th an Act was made in England making it Felony in a Servant that runneth away with his Masters or Mistresses Goods. This Act was not receiv'd in Ireland till it was Enacted by a Parliament held here in the 33d of Henry the 8th. c. 5. Ses. I.

In the 21th of Henry VIII. c. 19. there was a Law made in England, That all Lords might Distrain on the Lands of them holden, and make their Avowry not naming the Tenant, but the Land. But this was not of force in Ireland till Enacted here in the 33d of Henry VIII. C. 1. Ses. I.

An Act was made in England, anno 31. Henry VIII. That Joint-Tenents and Tenents in Common should be compelled to make Partition, as Coparceners were compellable at Common Law. But this Act was not Receiv'd in Ireland till Enacted here Anno 33. Henry VIII. c. 10.



Anno 27. *Henry VIII.* c. 10. The Statute for Transferring Uses into Possession was made in *England*; but not admitted in *Ireland* till 10. *Car. 1.* Sec. 2.

In like manner, the English Statute 33. *Henry VIII.* c. 1. directing how Lands and Tenements may be dispos'd by Will, &c. was not of force in *Ireland* till 10. *Car. 2.* Sec. 2.

The Act of Uniformity of Common Prayer and Administration of the Sacraments was made in *England* the 1st. of *Eliz.* c. 2. but was not establish'd in *Ireland* till the 2d. of *Eliz.* c. 2. And so that of *England* 14. *Car. 2.* c. 14. was not receiv'd in *Ireland* till 17. & 18. *Car. 2.* c. 6.

The Statute against Wilful Perjury made in *England* 5. *Eliz.* c. 9. was not Enacted in *Ireland* till 28 *Eliz.* c. 1.

So the English Act against Witchcraft and Sorcery made 5 *Eliz.* c. 16.

And

And another Act against Forgery 5. *Eliz.* c. 14. were neither of them in force in *Ireland* till the 28th of Her Reign, Cap. 3 and 4.

The English Statutes against Pirates was made the 28th of *Hen.* 8. c. 15. but not in *Ireland* till the 12th of King *James*, c. 2.

In *England* an Act was made the 27th of *Eliz.* c. 14 against Fraudulent Conveyances; but it was not in force in *Ireland* till Enacted here the 10th of *Charles*, c. 3. Sec. 2.

In the 15th year of King *Charles* the 1st. in a Parliament held at *Dublin* there were Six English Statutes made Laws of this Kingdom, with such Alterations as best fitted them to the State thereof, *viz.*

21 *Jac.* c. 14. For pleading the General Issue in Intrusions brought by the King, by Chap. 1. of the Irish Statutes.

31 *Eliz.* c. 2. For Abridging of Proclamations on Fines, by Chap.

2.

2 and

2. and 3 *Edw. 6. c. 8.* Concerning  
Offices before the Escheator, by  
Chap. 4.

3. 1 *Eliz. c. 1.* Discontinuance of  
Writs of Error in the Exchequer  
Chamber, by Chap. 5.

8 *Eliz. c. 4.* and 18 *Eliz. c. 7.* con-  
cerning Clergy, by Chap. 7.

24 *Hen. 8. c. 15.* Concerning Kil-  
ling a Robber, by Chap. 9.

There are Six English Statutes  
likewise passed in the time of King  
Charles the 2d. upon and soon after  
the Restoration, some of which  
were not passed into Laws in Ire-  
land till a year, two or three, after-  
wards : As will appear by consult-  
ing the Statute Books. (a)

And in the First year of *William*  
and *Mary*, *Ses. 2. c. 9.* an Act passed  
in England declaring all Attainders  
and other Acts made in the late pre-  
tended Parliament under King James  
at Dublin void. But was not En-  
acted here in Ireland till the 7th  
year of *K. William c. 3.* And this was  
thought requisite to be done upon  
mature consideration thereon before  
the

(a) Irish Stat.

13 C. 2. c. 2.

13 C. 2. c. 3.

14 & 15 C. 2.

c. 1.

14 & 15 C. 2.

c. 19.

17 & 18 C. 2.

c. 3.

17. & 18 C. 2.

c. 11.

English Stat.

12 C. 2. c. 12.

12 C. 2. c. 3.

12 C. 2. c. 14.

12 C. 2. c. 24.

12 C. 2. c. 33.

16 & 17 C. 2.

c. 5.

\* For we had two several Acts transmitted to us at different times, to this very purpose. One we rejected in the Lord Sydneys Government, t'other we pass'd under the Lord Capell.

the King and Council of *England*, notwithstanding that the English Act does particularly name *Ireland*, and was wholly design'd for, and relates thereto.

The like may we find in several other Statutes of *England* passed since his present Majesties Accession to the Throne, which have afterwards been passed here in *Ireland*, with such Alterations as make them practicable and agreeable to this Kingdom. Such as are amongst others, the Act for *Disarming Papists*. The Act of *Recognition*. The Act for taking away *Clergie* from some Offenders. The Act for taking *Special Bail* in the Country, &c. The Act against *Clandestine Mortgages*. The Act against *Cursing and Swearing*.

These, with many more, are to be found in our Statute Books in the several Reigns of *Henry* the 8th. *Edward* the 6th. *Queen Elizabeth*, *King James*, *King Charles* the 1st and 2d. and *King William*. But it is not to be found in any Records

Records in *Ireland*, that ever any Act of Parliament introductive of a new Law made in *England* since the time of King *John*, was by the judgment of any Court received for Law, or put in Execution in the Realm of *Ireland* before the same was Confirmed and Assented to by Parliament in *Ireland*.

And thus I presume we have pretty clearly made out our *Fourth Enquiry* forementioned; and shewn plainly the several steps by which the English form of Government, and the English Statute Laws were received in this Kingdom; and that this was wholly by the Peoples consent in Parliament, to which we have had a very antient Right, and as full a Right as our next Neighbours can pretend to or challenge.

I shall now consider the Objections and Difficulties that are moved on this Head drawn from Precedents, and Passages in our Law-Books that may seem to prove the contrary.

Objections  
Answer'd,

First

Objection  
from the Stat.  
of Rape.

First 'tis urg'd, That in the Irish Act concerning Rape passed Anno 8 Edward 4, c. 1. 'tis expressed, That a Doubt was conceiv'd whether the English Statute of the 6th of Richard the 2d. c. 6. ought to be of force in Ireland without a Confirmation thereof in the Parliament of Ireland. Which shews (as some alledg) that even in those days it was held by some, That an Act of Parliament in England might bind Ireland before it be consented to in Parliament here.

But I concieve this Gloss is rais'd meerly for want of Expressing the Reason of the said Doubt in the Irish Statute of the 8th of Edward the 4th. c. 1. which we may reasonably judge was this. By the Statute of Westminster the 2d. c. 34. a Woman that eloped from her Husband and lived with the Adulterer, or a Wife that being first Ravish'd did afterwards consent, and lived with the Ravisher, she should loose her Dower. This Statute of Westminister the 2d, was made of force in Ireland by an Act passed here the



the 13th of *Edward* the 2d, as we have seen before, pag. 68, 69. Afterwards by the English Statute of the 6th of *Rich.* the 2d. c. 6. there was a farther addition made to the said Statute of *Westminster* the 2d. to this effect, That a Maiden or Wife being Ravished, and afterwards consenting to the Ravishers, as well the Ravisher as she that was Ravished shall be disabled to claim all Inheritance or Dower after the death of her Husband or Ancestor.

On this account the Doubt was here raised in *Ireland* in the 8th of *Edward* the 4th c. 1. Whether this latter English Statute of the 6th of *Richard* the 2d. c. 6. were not in force in *Ireland* by virtue of the Irish Statute of the 13th of *Edward* the 2d. which confirmed the Statute of *Westminster* the 2d. c. 34. And for settling this Doubt the said Statute of the 8th of *Edward* the 4th c. 1. was passed in *Ireland*, and we find very good reason for the said Doubt. For the English Statute of the 6th of *Richard* the 2d. c. 6. contained but a small addition  
to

to the Statute of *Westminster* the 2d c. 34. and we see that even this addition it self was judged not to be of force in *Ireland* till Enacted here. For the said Irish Statute of the 8th of *Edward* the 4th. c. 1. makes the said Statute of the 6th of *Rich.* 2d. c. 6. of Force in *Ireland* only from the 6th of *March*, then last past.

'Tis urg'd secondly, That tho' perhaps such Acts of Parliament in *England* which do not Name *Ireland*, shall not be construed to Bind *Ireland*, yet all such English Statutes as mention *Ireland*, either by the General Words of all his Majesty's Dominions, or by particularly Naming of *Ireland*, are and shall be of Force in this Kingdom.

This being a Doctrine first broach'd Directly (as I conceive) by *Will. Hufsey*, Lord Chief Justice of the Kings Bench in *England*, in the first year of *Henry* the Seventh, and of late Revived by the Lord Chief Justice *Cook*, and strongly urged, and much rely'd upon in these latter Days; I shall take the Liberty of Enlarging thereon, tho'

I venture thereby to swell this Pamphlet to a size greater than I desire or design'd.

First therefore, As to such English Statutes as seem to comprehend *Ireland*, and to Bind it, under the *General Words of all his Majesty's Dominions or Subjects*, whatever has been the Opinion of Private and Particular Lawyers in this Point, I am sure the Opinions of the Kings of *England*, and their Privy Council, have been otherwise: 'Tis well known since *Poyning's Act* in *Ireland*, the 10th of *Henry the Seventh*, no Act can pass in our Parliament here, till it be first Assented to by the King and Privy Council of *England*, and Transmitted hither under the Broad Seal of *England*: Now the King and his Privy Council there, have been so far from surmising that an Act of Parliament of *England*, mentioning only in General *All the Kings Dominions*, or *Subjects*, should Bind *Ireland*, that they have clearly shewn the contrary, by frequently Transmitting to *Ireland*, to be pass'd into Laws here, English Statutes,

Object.  
English Statutes comprehend *Ireland* by general Words.

tutes, wherein the *General Words* of all the *Kings Dominions* or *Subjects* were contain'd; which would have been to no purpose, but meerly *Actum Agere*, had *Ireland* been Bound *before* by those *English Statutes*.

Of this I shall give the following Examples, amongst many others.

Act against  
Appeals to  
Rome.

The Act of Parliament in *England* against *Appeals to Rome*, 24 *Hen. 8. c. 12.* by exprefs words extends to all his Majesties Dominions, yet the same was not in force, nor receiv'd in *Ireland*, till it was Enacted by Parliament there, the 28th of *Hen. 8. c. 6.*

Acts of First  
Fruits and Fac-  
culties.

(a) Title in the  
English Sta-  
tutes is, No  
Imposition  
shall be paid to  
the Bishop of  
Rome.

In like manner the Statutes made in *England* concerning *First Fruits*, 26 *Hen. 8. c. 3.* and the Act of *Faculties*, (a) 25 *Hen. 8. c. 21.* though each of them by exprefs words comprize *All his Majesties Subjects and Dominions*, were not receiv'd as Laws in *Ireland*, till the former was Enacted there, 28 *H. 8. c. 4.* and the latter the 28 *Hen. 8. c. 19.* and so

the Statute Restoring to the Crown all Jurisdiction Ecclesiastical made in *England, Anno 1 Eliz. c. 1.* and therein giving Power to Erect an Ecclesiastical *High-Commission-Court* in *England* and *Ireland*, yet was not of Force in *Ireland* till Enacted there, *Anno 2 Eliz. c. 1.* And tho' the said English Act, in relation to Erecting such an High-Commission Court, was Repeal'd 17 *Car. 1. c. 11* and the Repeal confirm'd the 13 *Car. 2. c. 12* And the late Bill of *High-Commission-Court* Rights, 1 *W. and M. Ses. 2. c. 2.* in *England*, has damn'd all such Courts. Yet the Act in *Ireland 2 Eliz. c. 1.* remains still in force here; and so it was lately declar'd here by the Lord High-Chancellor *Porter*, Lord Chief Justice *Reynel*, Lord Chief Baron *Hely*, Mr. Justice *Cox*, Mr. Justice *Jeffreyson*, in the Case of *Dr. Thomas Hacket*, late Bishop of *Down*, who was depriv'd of the said Bishoprick by such a Commission, for great Enormities; the Commissioners being *Dr. Dopping* late Bishop of *Meath*, *Dr. King*, the present Bishop of *London-Derry*, and *Dr. Wiseman*, late Bishop of *Down*.

By the same  
Reason *Scot-*  
*land* may be  
bound.

And truly I see no more Reason for Binding *Ireland* by the English Laws under the *General Words* of *all his Majesties Dominions or Subjects*, than there is for Binding *Scotland* by the same ; for *Scotland* is as much his *Dominion*, and *Scots-men* as much his *Subjects* as *Ireland* and *Irish-men* : If it be said, That *Scotland* is an Antient *Separate and Distinct Kingdom* from *England* ; I say, So is *Ireland* : The Difference is, *Scotland* continued *separate* from the Kings of *England* till of late years, and *Ireland* continued *separate* from *England* but a very little while in the Person of King *John*, before the Death of his Father, and of his Brother *Richard* the First, without issue. But then 'tis to be considered, that there was a *Possibility*, or even a *Probability*, that *Ireland* might have continued *separate* from the Crown of *England*, even to this very day, if *Richard* the First had left behind him a Numerous Progeny.

Secondly



Secondly, As to such English Statutes as particularly Name Ireland, and are therefore said to be of Force in this Kingdom, tho' never Enacted here ; I shall consider only the more *Antient Precedents* that are offered in Confirmation of this Doctrine : For as to those of *later Date*, 'tis these we complain of, as bearing hard on the *Liber-ties* of this Country, and the *Rights* of our Parliaments, and therefore *these* ought not to be produced as Arguments against us. I presume, if I can shew, that the *Antient Precedents* that are produced, *do not conclude* against us ; it will follow that the *Modern* Instances given, *ought not to conclude* against us ; that is to say plainly, These *ought not to* have been made as they are, as wanting Foundation both from Authority and Reason.

English Sta-  
tutes naming  
Ireland.

The *Antient* Precedents of English Statutes, particularly *Naming Ireland*, and said to be made in *England* with a Design of Binding *Ireland*, are chiefly these three :

1. *Statutum Hiberniæ*, 14 H. 3.
2. *Ordinatio pro Statu Hiberniæ*,  
17 Edw. 1.
3. And the Act that all *Staple* Commodities passing out of *England* or *Ireland*, shall be carried to *Callis*, as long as the *Staple* is at *Callis*, 2 Hen. 6. c. 4. on which *Hussey* delivered his Opinion, as we shall see more fully hereafter.

These Statutes, especially the two first, being made for *Ireland*, as their Titles import, have given occasion to think, that the Parliament of *England* have a *Right* to make Laws for *Ireland*, without the *Consent* of their Chosen *Representatives*. But if we Enquire farther into this matter, we shall find this Conclusion not fairly Deduced.

First, The *Statutum Hiberniæ*, 14 Hen. 3. as 'tis to be found in the Collection of English Statutes, is plainly thus: The Judges in *Ireland* concei-

conceiving a Doubt concerning Inheritances devolved to Sisters or Coheirs, *viz.* Whether the younger Sisters ought to hold of the Eldest Sister, and do Homage unto her for their Portions, or of the Chief Lord, and do Homage unto him; therefore *Girald Fitz Maurice*, the then Lord Justice of *Ireland*, dispatcht four Knights to the King in *England*, to bring a Certificate from thence of the *Practice* there used, and what was the *Common-Law* of *England* in that *Case*. Whereupon *Hen. 3.* in this his Certificate or Rescript, which is called *Statutum Hiberniæ*, meerly informs the Justice what the *Law* and *Custom* was in *England*, *viz.* That the Sisters ought to hold of the Chief Lord, and not of the Eldest Sister. And the close of it commands, that *the foresaid Customs that be used within our Kealm of England in this Case, be Proclaimed throughout our Dominion of Ireland, and be there observ'd.* *Teste meipso apud Westminster.* 9. Feb. An. Reg. 14.

From whence 'tis manifest, that this *Statutum Hiberniæ* was no

more than a Certificate of what the common Law of England was in that Case, which Ireland by the Original Compact was to be governed by. And shews no more, that therefore the Parliament of England may bind Ireland, than it would have proved, that the Common Wealth of Rome was subject to Greece, if, after Rome had received the Law of the Twelve Tables, they had sent to Greece to know what the Law was, in some Special Case.

Or dinatio pre  
Statu Hiber-  
nia.

The Statute call'd *Ordinatio pro Statu Hiberniæ*, made at Nottingham the 17th of Edward the First, and to be found in *Pultons Collection* pag. 76. Edit. Lond. 1670. was certainly never Received, or of Force, in Ireland. This is Manifest from the very first Article of that Ordinance, which Prohibits the Justice of Ireland or others the Kings Officers, there to Purchase Land in that Kingdom, or within their respective Baronies without the Kings Licence, on pain of Forfeitures. But that this has ever been Otherwise, and that the Lords Justices, and other Officers

cers here have Purchas'd Lands in Ireland, at their own Will and Pleasure, needs no Proof to those who have the least knowledge of this Country. Nor does it appear by any Inquisition, Office, or other Record, that any one ever Forfeited on that Account.

Moreover this *Ordinatio pro Statu Hiberniæ*, is really in it self No Act of Parliament, but meerly an Ordinance of the King and his Privy Council in England; which appears as well from the Preamble to the said Ordinance, as from this Observation likewise, That King Edward the First held no Parliament in the 17th year of his Reign: Or if this were a Parliament, this *Ordinatio pro Statu Hiberniæ*, is the only Act thereof that is Extant: But 'tis very improbable, that only this single Ordinance should Appear, if any such Parliament were call'd together.

Thirdly, As to the *Staple-Act*, *Staple-Act*.] 2 Hen. 6. c. 4. which expressly names Ireland, and Hussey's Opinion thereon. The Case, as we find it in the Year-

Merchants of  
Waterford's  
Case.

Year-Books of *Mich. 2 Rich. 3. fol. 11.* and *Mich. 1 Hen. 7. fol. 3.* is in short thus: The Merchants of *Waterford* having Ship'd off some Wooll, and consign'd it to *Sluice* in *Flanders*, the Ship by stress of Weather was put in at *Callis*, where *Sir Thomas Thwaits*, Treasurer of *Callis*, seized the said Wooll as forfeited, half to himself, and half to the King, by the said Statute; hereupon a Suit was commenced between the said Merchants and the said Treasurer, which was brought before all the Judges of *England* into the *Exchequer* Chamber: The Merchants pleaded the King's *License* to the Citizens of *Waterford* and their Successors, for carrying Wooll where they pleased; and the Questions before the Judges were two, *Viz. Whether this Staple-Act Binds Ireland; And Secondly, Whether the King could grant his License contrary to the Statute, and especially where the Statute gives half the Forfeiture to the Discoverer.*

The first Point only relates to our present purpose; and herein we find the foresaid Year-Book of 2  
*Rich.*



*Rich.3. fol.12. to Report it thus: Et ibi (in the Exchequer Chamber) quoad Primam Questionem Dicebant quod Terr. Hibern. inter se habent Parliament. & omnimodo Cur. prout in Angl. & per Idem Parliamentum faciunt Leges & Mutant Leges & non Obligantur per Statuta in Anglia, quia non hic habent Milites Parliamenti (and is not that an unanswerable Reason?) sed hoc intelligitur de terris & rebus in terris illis tantum efficiendo; sed Personæ eorum sunt Subject. Regis & tanquam Subjecti erunt Obligati ad aliquam rem extra Terram illam faciend. contra Statut. sicut habitantes in Caleſia, Gascoignie, Guien, &c. dum fuere Subjecti; & Obedientes erunt sub Admiral. Angl. de re fact. super Altum Mare; & similit. Brev. de Errore de Iudicio reddit. in Hibern. in Banco Reg. hic in Angl.*

I have *verbatim* transcribed this Passage out of the foresaid Year-Book, that I might be sure to omit nothing that may give the Objection its full weight. And all that I can answer to it, is this :

I. That

1. That when the foresaid Case came a second time under the Consideration of the Judges in the Exchequer Chamber in *Mich. 1 Hen. 7. fol. 3.* we find it Reported thus: *Hussey the Chief Justice said, That the Statutes made in England shall bind those of Ireland, which was not much gain-said by the other Judges, notwithstanding that some of them were of a contrary Opinion the last Term in his Absence.* How the Presence and Opinion of the Chief Justice came to influence them now, I leave the Reader to judge.

2. That *Brook* in Abridging this Case of the first of *Hen. 7. fol. 3.* Title *Parliament*, Sec. 90. adds, *Tamen Nota, That Ireland is a Kingdom by it self, and hath Parliaments of its own ;* intimating thereby, That therefore *Hussey's Opinion* herein was *Unreasonable.*

3. That 'tis manifest, if *Hussey* mean by his words, That *All Acts of Parliament in England shall bind Ireland*, it is directly contrary to the

the Judges Opinion in the second of *Richard* the Third, before recited ; for *within* the Land of *Ireland*, they are all positive, That the Authority of the Parliament of *England* will not Affect us. They seem at the utmost reach to extend the Jurisdiction of the English Parliament over the Subjects of *Ireland*, only in relation to their Actions beyond Seas, out of the Realm of *Ireland*, as they are the *King of England's Subjects* ; but *even This* will Appear Unreasonable, when we consider, that by the same Argumentation, *Scotland* it self may be bound by English Laws, in relation to their Foreign Trade, as they are the *King of Englands Subjects*. The Question is, Whether *England* and *Ireland* betwo Distinct Kingdoms, and whether they have each their Respective Parliaments ; neither of which will be deny'd by any Man : And if so, there can be no Subordination on either side, each is compleat in its own Jurisdiction, and ought not to interfere with t'other in any thing. If *being the King of Englands Subjects*, be a Reason why  
we

we ought to submit to Laws, (in relation to our Trade abroad, in places where the Parliament of *England* has no Jurisdiction) which have not receiv'd our Assent; the People of *England* will consider whether they also are not the King's Subjects, and may therefore (by this way of Reasoning) be bound by Laws which the King may Assign them without their Assent, in relation to their Actions *Abroad*, or Foreign Trade: Or whether they had not been Subjects to the *King of France*, had our Kings continu'd their Possession of that Country, and there kept the Seat of the Monarchy; and then, had *France* been stronger than *England*, it might seem that the Subjects of these Kingdoms might have been bound by Laws made at *Paris*, without their own Consent. But let this Doctrine never be mention'd amongst the *Free-born* Subjects of these Nations.

Thus I have done with the *Three Principal* Instances that are usually brought against us, on the Stress that is laid on English Acts of Parlia-

Parliament, particularly *Naming*  
*Ireland.*

There have been other Statutes <sup>Members from</sup> or Ordinances made in *England* <sup>Ireland in the</sup> for <sup>Parliament of</sup> *Ireland*, which may reasonably be <sup>England.</sup> of force here, because they were made and Assented to by our own Representatives. Thus we find in the *White Book* of the Exchequer in *Dublin*, in the 9th year of *Edward* the First, a Writ sent to his Chancellour of *Ireland*, wherein he mentions *Quædam Statuta per nos de Assensu Prelatorum Comitum Baronum & Communitates Regni nostri Hiberniæ, nuper apud Lincoln & quædam alia Statuta postmodum apud Eborum facta.* These we may suppose were either Statutes made at the Request of the States of *Ireland*, to *Explain* to them the *Common Law of England*; or if they were introductive of *New Laws*, yet they might well be of force in *Ireland*, being Enacted by the Assent of our own Representatives, The Lords Spiritual and Temporal, and Commons of *Ireland*; as the Words afore-mention'd do shew: And indeed, these are Instances so far from

from making *against* our Claim, that I think nothing can be more plainly *for* us ; for it manifestly shews, that the King and Parliament of *England* would not Enact Laws to Bind *Ireland*, without the Concurrence of the Representatives of this Kingdom.

Formerly, When *Ireland* was but thinly Peopled, and the English Laws not fully currant in all parts of the Kingdom, 'tis probable that then they could not frequently Assemble with conveniency of safety to make Laws in their own Parliaments at home ; and therefore during the Heats of Rebellions, or Confusion of the Times, they were forced to Enact Laws in *England*. But then this was always by their proper *Representatives* : For we find that in the Reign of *Edward* the Third, (and by what foregoes, 'tis plain 'twas so in *Edward* the First's Time) Knights of the Shire, Citizens, and Burgessees, were Elected in the Shires, Cities and Burroughs of *Ireland*, to serve in Parliament in *England*, and have so served accordingly. For amongst  
the



the Records of the *Tower of London*, *Rot. Claus. 50. Edw. 3. Parl. 2. Membr. 23.* We find a Writ from the King at *Westminster*, directed to *James Butler*, Lord Justice of *Ireland*, and to *R. Archbishop of Dublin*, his Chancellour, requiring them to issue Writs under the Great Seal of *Ireland*, to the several Counties, Cities and Burroughs, for satisfying the Expences of the Men of that Land, who last came over to serve in Parliament in *England*. And in another Roll the 50th of *Edw. III. Membr. 19.* On Complaint to the King by *John Draper*, who was Chosen Burgess of *Cork* by Writ, and served in the Parliament of *England*, and yet was deny'd his Expences by some of the Citizens, Care was taken to re-imburse him.

If from these last mention'd Records, it be concluded that the Parliament of *England* may Bind *Ireland*; it must also be Allow'd that the People of *Ireland* ought to have their Representatives in the Parliament of *England*. And this, I believe we should be willing enough

to embrace ; but this is an Happiness we can hardly hope for.

This sending of Representatives out of *Ireland* to the Parliament in *England*, on some occasions, was found in process of time to be very Troublesome and Inconvenient ; and this, we may presume, was the Reason, that afterwards, when Times were more settled, we fell again into our old Track, and regular course of Parliaments in our own Country : and hereupon the Laws afore-noted, pag. 64. were Enacted, Establishing that *no Law made in the Parliament of England, should be of force in Ireland, till it was Allow'd and Publish'd in Parliament here.*

Modern Acts  
of the Parlia-  
ment of Eng-  
land, naming  
*Ireland.*

I have said before, pag. 85. that I would only consider the *more Ancient Precedents* that are offered to prove, That Acts of *England* particularly *Naming Ireland*, should bind us in this Kingdom ; and indeed it were sufficient to stop here, for the Reason above alledged. However, I shall venture to come down lower, and to enquire into the *Modern Prece-*

Precedents of English Acts of Parliament alledged against us: But still with this Observation, That tis these we *Complain against* as Innovations, and therefore they ought not to be brought in Argument against us.

I do therefore again assert, that before the Year 1641. there was no Statute made in *England* introductory of a *New Law* that interfered with the Right which the People of *Ireland* have to make Laws for themselves, except only those which we have before mentioned, and which we have discuss'd at large, and submit to the Readers Judgment.

But in the Year 1641. and afterwards in *Cromwel's* time, and since that, in King *Charles II.* and again very lately in King *William's* Reign, some Laws have been made in *England* to be of Force in *Ireland*. But how this came to pass, we shall now Enquire.

In the 17th Year of K. *Charles I.* Acts in favour of Adventurers in 1641. which was in the Year 1642. there were

were three or four Acts of Parliament made in *England* for encouraging *Adventurers* to raise Money for the speedy suppression of the Horrid Rebellion which broke out in *Ireland* the 23<sup>d</sup> of *October* 1641. The Titles of these Acts we have in *Pulton's Collection of Statutes*: But with this Remark, *That they are made of no Force by the Acts of Settlement and Explanation* passed in King *Charles II's*. time in the Kingdom of *Ireland*. So that in these we are so far from finding Precedents for *England's* Parliament binding *Ireland*, that they plainly shew, that the Parliament of *Ireland* may Repeal an Act passed in *England*, in relation to the Affairs of *Ireland*. For 'tis very well known, that Persons who were to have Interests and Titles in *Ireland* by virtue of those Acts passed in *England*, are cut off by the *Acts of Settlement and Explanation*. And indeed there is all the Reason in the World that it should be so, and that Acts made in a Kingdom by the Legal Representatives of the People, should take place of those made in another Kingdom. But however, it will be said,

said, that by those Acts 'tis manifest that *England* did presume they had such a *Right* to pass Acts binding *Ireland*, or else they had ne'er done it. To which I answer, That considering the condition *Ireland* was in at that time, *viz.* under an horrid *Intestine Rebellion*, flaming in every corner of the Kingdom; 'twas impossible to have a Parliament of our own; yet it was absolutely necessary that something should be done towards suppressing the Violences then raging amongst us: And the only means could then be practised, was for the Parliament of *England* to interpose, and do something for our Relief and Safety; these were the best Assurances could be had at that juncture: But when the Storm was over, and the Kingdom quieted, we see new Measures were taken in a Legal Parliament of our own.

As to what was done for *Ireland* Acts in Crom-  
in the Parliament of *England* wells time,  
in *Cromwel's* time, besides the Confusion and Irregularity of all Proceeding in those days, which hinders any of them to be brought in.

to Precedent in these times; We shall find also that then there were *Representatives* sent out of this Kingdom, who sat in the Parliament of *England*, which then was only the *House of Commons*. We cannot therefore argue from hence, that *England* may bind us; for we see they allow'd us *Representatives*, without which, they rightly concluded, they could not make *Laws* *Obligatory* to us.

I come now to King *Charles* the 2<sup>ds</sup> time. And in it we shall find the following *English* Statutes made, in which the Kingdom of *Ireland* is concerned.

**Cattle Act.**

The first is an Act against Importing Cattle from *Ireland* or other Parts beyond Seas. It was only temporary by 18 Ch. 2. c. 2. but made perpetual 20 Ch. 2. c. 7. and 32 Ch. 2. c. 2. This Act, however prejudicial to the Trade that was then carried on between *Ireland* and *England*, does not properly Bind us, more than it does any other Country of the World. When any thing is Imported, and Landed in  
England,



*England*, it becomes immediately subject to the Laws thereof, so that herein we cannot be said *properly* to be bound.

Secondly, The Acts against Plant- Tobacco Act  
ing *Tobacco* in *England* and *Ireland*,  
12 Ch. 2. c. 34. and 15 Ch. 2. c. 7.  
and 22 and 23 Ch. 2. c. 26, &c. do  
*positively Bind Ireland*. But there  
has never been an Occasion of Ex-  
ecuting it here; for I have not  
heard that a Rood of Tobacco was  
ever Planted in this Kingdom. But  
however that takes not off the O-  
bligation of the Law: 'Tis only  
want of our Consent, that I urge  
against that. I see no more Reason  
for sending a Force to Trample  
down an Acre of *Tobacco* in *Ireland*  
by these Statutes, than there would  
be for Cutting down the Woods of  
*Shelela*, were there an Act made  
in *England* against our Planting or  
Having *Timber*.

Thirdly, The Act for Encouraging Navigation  
Shipping and Navigation, by express Act.  
name Mentions and Binds *Ireland*;  
and by the last Clause in the Act,  
Obliges all Ships belonging thereto

importing any Goods from our Foreign Plantations, to touch first at *England*.

Note, Exporting Wooll from *Ireland*, is made penal by the Irish

Stat. 12 *Hen. 8.*

c. 2. 28 *Hen. 8.*

c. 17. But both these Statutes

are obsolete:

The like, may

we observe of

the 11 *Eliz.*

c. 10. & 13 *El.*

c. 4.

Fourthly, The Acts Prohibiting the Exportation of Wooll from *Ireland*, to any Country except to *England*, do likewise strongly Bind us, and by the 12 *Car. 2. c. 32.* it was made highly penal on us, and by the 14th of *Car. 2. c. 18.* 'tis made Felony:

To these three last Acts, I must confess, I have nothing to urge, to take off their Efficacy; Name us they do most certainly, and Bind us so, as we do not transgress them, But how Rightfully they do this, is the matter in Question. This I am sure of, that before these Acts in King *Charles* the Second's Time, (the Eldest of which is not over Thirty-Seven years) there is not one positive full Precedent to be met with in all the Statute-Book, of an English Act Binding the Kingdom of *Ireland*. And on this Account we may venture to assert, That these are at least Innovations on us, as not being warranted by any former Precedents. And

And shall *Proceedings only of Thirty-Seven Years standing*, be urg'd against a Nation, to Deprive them of the *Rights* and *Liberties* which they Enjoy'd for Five Hundred Years before, and which were Invaded without and against their *Consent*, and from that day to this have been constantly complain'd of? Let any English Heart that stands so *Justly* in Vindication of his own *Rights* and *Liberties*, answer this Question, and I have done.

I am now arriv'd at our Present English Acts Binding Ire-land since King William's Reiga. Days, under the Happy Govern-ment of His Majesty King *WILLIAM* the Third; and I am sorry to reflect, That since the late Revolution in these Kingdoms, when the Subjects of *England* have more strenuously than ever Asserted their own *Rights*, and the *Liberty* of Parliaments, it has pleas'd them to bear harder on their Poor Neighbours, than has ever yet been done in many Ages foregoing. I am sure what was then done by that Wise and Just Body of Senators,

rors, was perfectly out of Good Will and Kindness to us, under those Miseries which our Afflicted Country of *Ireland* then suffered. But I fear some Men have since that, made use of what was then done, to other Purposes than at first intended. Let us now see what that was, and consider the Circumstances under which it was done.

In the year 1689. when most of the Protestant Nobility, Gentry, and Clergy of *Ireland*, were driven out of that Kingdom by the Insolencies and Barbarities of the *Irish Papists*, who were then in Arms throughout the Kingdom, and in all Places of Authority under King *James*, newly Return'd to them out of *France*; the only Refuge we had to fly to was in *England*, where Multitudes continued for many Months, destitute of all manner of Relief, but such as the Charity of *England* afforded, which indeed was very *Munificent*, and never to be forgotten.

The

The Protestant Clergy of Ireland being thus Banish'd from their Benefices, many of them Accepted such small Ecclesiastical Promotions in England, as the Benevolence of well dispos'd Persons presented them with. But this being directly contrary to a Statute in this Kingdom, in the 17 and 18 of Charles the Second, Cap. 10. Intituled, *An Act for Disabling of Spiritual Persons from holding Benefices or other Ecclesiastical Dignities in England or Wales, and in Ireland at the same time.* The Protestant Irish Clergy thought they could not be too secure in avoiding the Penalty of the last mention'd Act, and therefore Apply'd themselves to the Parliament of England, and obtain'd an Act in the first year of King William and Queen Mary, c. 29. Intituled, *An Act for the Relief of the Protestant Irish Clergy.* And this was the first Attempt that was made for Binding Ireland by an Act in England, since his Majesty's Happy Accession to the Throne of these Kingdoms.

As for the  
Protestant  
Irish Clergy.

After-

Act against  
Commerce  
with France.

Afterwards in the same year, and same Session, Chap. 34. there pass'd an Act in *England*, *Prohibiting all Trade and Commerce with France*, both from *England* and *Ireland*. This also binds *Ireland*, but was during the Heat of the War in that Kingdom, when 'twas impossible to have a regular Parliament therein, all being in the hands of the Irish Papists. Neither do we complain of it, as hindring us from corresponding with the King's Enemies, for 'tis the Duty of all Good Subjects to abstain from that. But as *Scotland*, tho' the King's Subjects, Claims an Exemption from all Laws but what they Assent to in Parliament; so we think this our Right also.

When the Banish'd Laity of *Ireland* observ'd the Clergy thus careful to secure their Properties, and provide for the worst as well as they could in that Juncture, when no other means could be taken by a Regular Parliament in *Ireland*; they thought it likewise adviseable for them to do something in relation to their Concerns. And accordingly



Accordingly they obtain'd the *Act for* ~~the~~ *the better Security and Relief, of* <sup>the</sup> *their Majesties Protestant Subjects of* ~~the~~ *Protestants of* <sup>rity of the</sup> *Ireland,* 1 W. and M. Sef. 2. c. 9.

Wherein King James's *Irish Parliament* at *Dublin*, and all *Acts* and *Attainders* done by them, are declared *void*. 'Tis likewise thereby Enacted, that no Protestant shall suffer any Prejudice in his Estate or Office, by reason of his absence out of *Ireland*, since *December 25. 1685.* and that there should be a Remittal of the Kings Quit-Rent, from *25 December 1688.* to the end of the War. Thus the Laity thought themselves secure.

And we cannot wonder that during the Heat of a Bloody War in this Kingdom, when it was impossible to Secure our Estates and Properties by a Regular Parliament of our own; we should have recourse to this Means, as the only which then could be had. We concluded with our selves, that when we had obtained these Acts from the Parliament in *England*, we had gon a great way in securing the like Acts to be passed in a regular Parliament in *Ireland*, whenever it should

should please God to re-establish  
 us in our own Country : For we  
 well knew our own Constitution  
 under *Poynings Law*, That no Act  
 could Pass in the Parliament of  
*Ireland* till approved of by the King  
 and Privy Council of *England*.  
 And we knew likewise, That all  
 the Lords and others of his Maje-  
 sties Privy Council in *England* are  
 Members of the Lords or Com-  
 mons House of Parliament there.  
 And that by obtaining their Assent  
 to Acts of Parliament in Favour of  
 the Irish Protestants, they had in a  
 manner pre-engaged their Assent to  
 the like Bills when they should  
 hereafter come before them as Pri-  
 vy Councillors, in order to be re-  
 gularly Transmitted to the Parlia-  
 ment of *Ireland*, there to be passed  
 into Laws of that Kingdom. But  
 instead of all this, to meet with  
 another Construction of what was  
 done herein, and to have it pleaded  
 against us as a Precedent of our  
 Submission, and absolute Aequies-  
 cence in the Jurisdiction of the  
 Parliaments of *England* over this  
 Kingdom, is what we complain of  
 as an Invasion (we humbly con-  
 ceive)

ceive) of that *Legislative Right* which our *Parliament of Ireland* claims within this Kingdom.

The next Act pass'd in the Parli- Act appoint-  
ing New Oaths  
ament of *England*, Binding *Ireland*, is that for *Abrogating the Oath of Supremacy in Ireland, and Appointing other Oaths*, 3 and 4 *William and Mary*, c.2. To this the Parliament convened at *Dublin*, Anno 1692. under Lord *Sydney*, and that likewise Anno 1695. under Lord *Capel*, paid an intire Obedience. And by this ('tis alledged) we have given up our *Right*, if any we had, and have for ever acknowledged our *Subordination to the Parliament of England*. But let us a little consider the force of this Argument.

I readily grant, that this and the other fore-mentioned Acts in *England* since the Revolution, when they were made, were look'd upon highly in our Favour, and for our Benefit; and to them as *such*, we have conform'd our Selves. But then, in all Justice and Equity, our Submission herein is to be deem'd *purely voluntary*, and not at all proceeding

Proceeding from the *Right* we conclude  
 thereby in the Legislators. If a  
 Man, who has *no Jurisdiction* over  
 me, *command* me to do a thing that  
 is *pleasing* to me; and I do it; it  
 will not thence follow, that there-  
 by he obtains an *Authority* over me,  
 and that ever hereafter I must O-  
 bey him of *Duty*. If I *voluntarily*  
 give my Money to a Man when I  
*please*, and think it *convenient* for  
 me; this does not Authorize him  
 at any time to *command* my Money  
 from me when *he pleases*. If it be  
 said, this allows Subjects to Obey  
 only whilst 'tis *convenient* for  
 them. I pray it may be consider-  
 ed, whether any Men Obey *longer*,  
 unless they be *forced* to it; and  
 whether they will not *free* them-  
 selves from this *Force* as soon as  
 they can. 'Tis impossible to hin-  
 der Men from desiring to *free* them-  
 selves from *Uneasiness*, 'tis a Prin-  
 ciple of Nature, and cannot be e-  
 radicating. If Submitting to an In-  
 convenience be a *less* Evil than en-  
 deavouring to Throw it off, Men  
 will Submit. But if the Inconve-  
 nience grow upon them, and be  
 greater than the hazard of getting  
 rid

rid of it, Men will Offer at putting it by, let the Statesman or Divine say what they can.

But I shall yet go a little further, and venture to Assert, That the Right of being subject *Only* to such Laws to which Men give their *own Consent*, is so inherent to all Mankind, and founded on such Immutable Laws of Nature and Reason, that 'tis not to be *Alien'd*, or *Given up*, by any Body of Men whatsoever: For the End of all Government and Laws being the Publick Good of the Commonwealth, in the Peace, Tranquility and Ease of every Member therein; whatsoever Act is contrary to this End, is in it self void, and of no effect: And therefore for a Company of Men to say, *Let us Unite our selves into a Society, and let us be absolutely Govern'd by such Laws, as such a Legislator, without ever Consulting us, shall devise for us*; 'tis always to be understood, *Provided we find them for our Benefit*: For to say, We will be Govern'd by those Laws, *whether they be Good or Hurtful to us*, is absurd in it self: For to what End

do Men joyn in Society, but to avoid Hurt, and the Inconveniences of the State of Nature?

Moreover, I desire it may be considered, whether the General Application of the Chief part of the Irish Protestants, that were at that time in *London*, to the Parliament at *Westminster*, for obtaining these Laws, may not be taken for their *Consent*, and on that Account, and no other, these Acts may acquire their *Binding Force*. I know very well, this cannot be look'd upon as a Regular and Formal *Consent*, such as might be requisite at another more favourable Juncture: But yet it may be taken *talis qualis*, as far as their Circumstances at that time would allow, till a more convenient Opportunity might present it self.

I am sure, if some such Considerations as these, may not plead for us, we are of all his Majesties Subjects the most Unfortunate: The *Rights* and *Liberties* of the Parliament of *England* have received the greatest Corroborations since



since his Majesties Accession to the Throne ; and so have the *Rights* of *Scotland* ; but the *Rights* of the People of *Ireland*, on the other hand, have received the greatest Weakening under his Reign, by our Submission (as 'tis alledg'd) to these Laws that have been made for us.

This certainly was not the Design of his Majesty's Glorious Expedition into these Kingdoms ; That, we are told by Himself, (whom we cannot possibly mistrust) was to Assert the Rights and Liberties of these Nations ; and we do humbly presume that his Majesty will be graciously pleased to permit us to Enjoy the Benefits thereof.

And thus I have done with the *Fourth Article* proposed. As to the *Fifth*, viz. *The Opinions of the Learned in the Laws relating to this Matter* ; 'tis in a great measure dispatch'd by what I have offer'd on the *Fourth Head* ; I shall therefore be the more brief thereon. And I think indeed the only Person of Note that remains to be considered

The Opinions  
of the Law-  
yers thereon.

Lord Chief  
Justice Cook's  
Opinion Dis-  
cuss'd.

by us, is the Lord Chief Justice  
Cook, a Name of great Veneration  
with the Gentlemen of the Long  
Robe, and therefore to be treated  
with all Respect and Deference.

(a) 20 H.6.8.  
Pilkington's  
Case.  
32 H.6. 25.  
20 Eliz. Dyer.  
360.  
Flowd. Com.  
360.

In his Seventh Report in *Calvin's*  
Case, he is proving that *Ireland* is  
a Dominion Separate and Divided  
from *England*; for this he quotes  
many Authorities (a) out of the  
Year-Books and Reports; and a-  
mongst others, he has that which  
I have before mention'd, pag. 91.  
2 R. 3. f. 12. which he Transcribes  
in this manner, *Hibernia habet Par-*  
*liamentum, & faciunt Leges, & no-*  
*stra Statuta non ligant eos, quia non*  
*mittunt Milites ad Parliamentum*;  
and then adds, in a Parenthesis,  
(which is to be understood, unless they  
be specially named) *sed Personæ eo-*  
*rum sunt subjecti Regis sicut inhabi-*  
*tautes in Calestra, Gasconia, & Guyan.*  
The first thing I shall observe here-  
on, is the very *unfaithful* and *broken*  
Citation of this Passage, as will  
manifestly appear by comparing  
it with the true Transcript I have  
given thereof before, pag. 91. Were  
this all, 'twere in some measure  
par-

pardonable. But what cannot be excused; is the Unwarrantable Position in his Parenthesis, without the least colour or ground for it in his Text. Herein he concludes down right Magisterially, *So it must be, this is my Definitive Sentence*; as if his *Plain Assertion*, without any other Reason, ought to prevail; nay, even point blank against the irrefragable Reason of the Book he quotes. I confess in another place of *Calvin's Case*, viz. fol. 17. b. he gives this Assertion a Colour of Reason, by saying, *That tho' Ireland be a Distinct Dominion from England, yet the Title thereof being by Conquest, the same by Judgment of Law might by Express Words be bound by the Parliaments of England* How far Conquest gives a Title, we have Enquired before: But I would fain know what Lord Cook means by *Judgment of Law*: Whether he means the *Law of Nature and Reason*, or of *Nations*; or the *Civil Laws* of our *Commonwealths*; in none of which Senses, I conceive, will he, or any Man, be ever able to make out his Position.

Is the Reason of *England's* Parliament not Binding *Ireland*, Because we do not send thither Representatives? And is the Efficacy of this Reason taken off, by our being Named in an English Act? Why should sending Representatives to Parliament, Bind those that send them? Meerly because thereby the *Consent* of those that are Bound, is obtain'd, as far as those sort of Meetings can possibly permit; which is the very *Foundation* of the *Obligation* of all Laws. And is *Ireland's* being Named in an English Act of Parliament, the least step towards obtaining the *Consent* of the *People of Ireland*? If it be not, then certainly my Lord Cook's Parenthesis is to no purpose. And 'tis a wonder to me, that so many Men have run upon this vain Imagination, meerly from the Assertion of this Judge: For I challenge any Man to shew me, that any one before him, or any one since, but from him, has vended this *Doctrine*: And if the bare Assertion of a Judge, shall Bind a whole Nation, and Dissolve

solve the *Rights* and *Liberties* thereof, We shall make their Tongues very powerful, and constitute them greater Lawgivers than the greatest Senates. I do not see why my *Denying* it, should not be as *Authentick* as his *Affirming* it. 'Tis true, He was a great Lawyer and a powerful Judge ; but had no more Authority to *make a Law*, than I or any Man else. But some will say, He was a Learned Judge, and may be supposed to have *Reason* for his Position. Why then does he not give it us? And then what he Asserts would Prevail, not from the *Authority of the Person*, but from the *Force of the Reason*. The most Learned in the Laws have no more power to make or alter a Constitution, than any other Man ; And their Decisions shall no farther prevail, than supported by Reason and Equity. I conceive my Ld. Ch. Justice Cooke apply'd himself so wholly to the Study of the *Common Laws of England*, that he did not enquire far into the *Laws of Nature and Nations* ; if he had, certainly he could never have been Guilty of such an Erroneous Slip ;

He would have seen demonstrably, that *Consent only* gives Humane Laws their Force, and that therefore the Reason in the Case he quotes is unanswerable, *Quia non mittunt Milites ad Parliamentum.* Moreover, the Assertion of Cooke in this point is directly contrary to the whole tenour of the Case which he cites: For the very Act of Parliament on which the Debate of the Judges did arise, and which they deemed not to be of Force in *Ireland*, particularly names *Ireland*. So that here again *Ld. Cooke's Error* appears most plainly: For this I refer to the Report, as I have exactly delivered it before pag. 90, 91. By which it appears clearly to be the unanimous Opinion of all the Judges then in the *Exchequer Chamber*: That *within the Land of Ireland*, the Parliaments of *England* have no Jurisdiction, whatever they may have over the Subjects of *Ireland* on the *open Seas*: And the reason is given, *Quia Hibernia non mittit Milites ad Parliamentum in Angliâ.*

This



This Assertion likewise is inconsistent with himself in other parts of his Works. He tells us in his 4th. Inst. pag. 349. *That 'tis plain that not only King John (as all Men allow) but Henry the Second also, the Father of King John, did Ordain and Command, at the Instance of the Irish, That such Laws as had been in England should be Observ'd and of Force in Ireland. Hereby Ireland being of it self a distinct Dominion, and no part of the Kingdom of England, was to have Parliaments holden there as in England. And in pag. 12. he tells us, That Henry the Second sent a Modus into Ireland, directing them how to hold their Parliaments. But to what end was all this, if Ireland nevertheless were subject to the Parliament of England? The King and Parliaments of these Kingdoms are the supream Legislators; If Ireland be subject to Two ( its Own, and that of England ) it has Two Supreams; 'tis not impossible, but they may Enact different or contrary Sanctions; which of these shall the People Obey? He tells us in Calvin's Case*  
fol.

fol. 17. b. *That if a King hath a Christian Kingdom by Conquest, as Henry the Second had Ireland, after King John had given to them, being under his Obedience, and Subjection, the Laws of England for the Government of that Country, no succeeding King could alter the same without Parliament.* Which, by the way, seems directly contradictory to what he says concerning Ireland six lines below this last cited passage. So that we may observe my Lord Cook enormously stumbling at every turn in this Point.

Opinions of  
other Judges,  
in Favour of  
Ireland,

Thus I have done with this Reverend Judge; and, in him, with the only *Positive Opinion* against us. I shall now consider what our Law-Books offer in our *Favour* on this Point.

To this purpose we meet a Case fully apposite, reported in the Year-Book of the 20th of *Henry the 6th*, fol. 8. between one *John Pilkington* and one *A.*

*Pilkington's*  
Case,

*Pilkington* brought a *Scire Facias* against *A.* to shew Cause, why Letters  
ters

ters Patents whereby the King had granted an Office in *Ireland* to the said *A.* should not be repeal'd, since the said *Pilkington* had the same Office granted to him by former Letters Patents of the same King to be occupied by himself or his Deputy. Whereupon *A.* pleaded, That the Land of *Ireland*, time out of Memory, hath been a Land separated and distinct from the Land of *England*, and Ruled and Governed by the Customs of the same Land of *Ireland*. That the Lords of the same Land, which are of the King's Council, have used from time to time, in the absence of the King, to Elect a *Justice*, who hath Power to Pardon and Punish all Felons, &c. and to call a Parliament, and by the Advice of the Lords and Commonalty to make Statutes. He alledged further, That a Parliament was Assembled, and that it was Ordain'd by the said Parliament, (a) That every Man who had an Office within the said Land, before a certain day, shall occupy the said Office by himself, otherwise, he should forfeit. He shew'd that *Pilkington* Occupied by a Deputy;

(a) This Statute we may reckon amongst the number of those that are lost during the long intervals of our Irish Acts, noted before page 65. to be about 118 Years,

puty; and that therefore his Office was void, and that the King had granted the said Office to him the said *A.* Hereupon *Pilkington* Demurr'd in Law; and it was debated by the Judges, *Telverton*, *Fortescue*, *Portington*, *Markham*, and *Ascough*, whether the said Prescription in relation to the State and Government of *Ireland*, be good or void in Law. *Telverton* and *Portington* held the Prescription void. But *Fortescue*, *Markham*, and *Ascough* held the Prescription good; and that the Letters Patents made to *A.* were good, and ought not to be Repeal'd. And in this it was agreed by *Fortescue* and *Portington*, That if a Tenth or Fifteenth be granted by Parliament in *England*, that shall not Bind *Ireland*, although the King should send the same Statute into *Ireland* under his Great Seal; Except they in *Ireland* will in their Parliament Approve it; Because they have not any Commandment by Writ to come to the Parliament of *England*: And this was not Denied by *Markham*, *Telverton*, or *Ascough*.

The

The *Merchants of Waterford's Case* Merchants of Waterford's Case.  
 which I have observed before, pag. 90. as Reported in the Year Book of the 2d. of *Richard* the 3d. fol. 11, 12, is notorious on our behalf, but needs not be here repeated.

The Case of the Prior of *Lanthony* in *Wales*, mentioned by Mr. *Pryn* against the 4th Inst. ch. 76. p. 313. is usually cited against us. But I conceive 'tis so far from proving this, that 'tis very much in our Behalf. The Case was briefly thus. The Prior of *Lanthony* brought an Action in the *Com. Pleas of Ireland* against the of Prior *Mollingar*, for an Arrear of an Annuity, and Judgment went against the Prior of *Mollingar*; hereon the Prior of *Mollingar* brought a Writ of Error in the *King's Bench of Ireland*, and the Judgment was affirmed. Then the Prior of *Mollingar* Appeal'd to the Parliament in *Ireland* held 5 *Hen.* 6. before *James Butler* Earl of *Ormond*, and the Parliament Revers'd both Judgments. The Prior of *Lanthony* removed all into the *King's Bench* in *England*; but the *King's Bench*

(a) Rot. Parl.  
An. 8. H. 6. in  
ult.

*Bench* refused to intermeddle, as having no Power over what had pass'd in the Parliament of *Ireland*. Hereupon the Prior of *Lanthony* Appeal'd to the Parliament of *England*. And it does not appear by the Parliament Roll (a) that any thing was done on this Appeal; all that is Entred being only the Petition it self at the end of the Roll. *Vid. Pryn* against the 4th Instit. chap. 76. p. 313.

Now whether this be a Precedent proving the Subordination of our Irish Parliament to that of *England*, I leave the Reader to judge. To me it seems the *clear contrary*. For first we may observe, the *King's Bench* in *England* absolutely disclaiming any Cognisance of what had pass'd in the Parliament of *Ireland*. And next we may observe, That nothing at all was done therein upon the Appeal to the Parliament of *England*: Certainly if the Parliament of *England* had thought themselves to have a Right to Enquire into this Matter, they had so done, one way or t'other, and not left the Matter Undetermin'd



It has ever been acknowledged that the Kingdom of *Ireland* is inseparably annex'd to the Imperial Crown of *England*. The Obligation that our Legislature lies under by *Poyning's Act*, 10 *H.7. c. 4.* makes this Tye between the two Kingdoms indissoluble. And we must ever own it our Happiness to be thus Annex'd to *England*: And that the Kings and Queens of *England* are by undoubted Right, *ipso facto* Kings and Queens of *Ireland*. And from hence we may reasonably conclude, that if any Acts of Parliament made in *England*, should be of force in *Ireland*, before they are Received there in Parliament, they should be more especially such Acts as relate to the *Succession* and *Settlement of the Crown*, and *Recognition of the Kings Title* thereto, and the *Power and Jurisdiction* of the King. And yet we find in the Irish Statutes, 28 *Hen.VIII. c.2.* An Act for the *Succession of the King and Queen Ann*; and another, Chap. 5. declaring the King to be *Supream Head of the Church of Ireland*; both which Acts had formerly

Argument  
from Acts of  
Succession  
and Recognition  
pass'd in  
*Ireland.*

pass'd

pass'd in the Parliament of *England*. So likewise we find amongst the *Irish Statutes Acts of Recognition of the Kings Title to Ireland*, in the Reigns of *Henry the Eighth*, *Queen Elizabeth*, *King James*, *King Charles the Second*, *King William* and *Queen Mary*. By which it appears that *Ireland*, tho' Annex'd to the Crown of *England*, has always been look'd upon to be a *Kingdom Compleat within it self*, and to have all Jurisdiction to an *Absolute Kingdom* belonging, and Subordinate to no Legislative Authority on Earth. Tho', 'tis to be Noted, these English Acts relating to the Succession, and Recognition of the Kings Title, do particularly Name *Ireland*.

*Ireland's State*  
*Ecclesiastical*  
*Independent.*

As the *Civil State* of *Ireland* is thus *Absolute* within it self, so likewise is our State *Ecclesiastical*: This is manifest by the *Canons and Constitutions*, and even by the *Articles* of the *Church of Ireland*, which differ in some things from those of the *Church of England*. And in all the *Charters and Grants of Liberties and Immunities* to *Ireland*,

*Ireland*, we still find this, That *Holy Church* shall be *Free*, &c. I would fain know what is meant here by the word *Free*: Certainly if our *Church* be *Free* and *Absolute* within it self, our *State* must be so likewise; for how our *Civil* and *Ecclesiastical* Government is now interwoven, every body knows. But I will not enlarge on this head, it suffices only to hint it; I shall detain my self to our *Civil Government*.

Another Argument against the Parliament of *England's* Jurisdiction over *Ireland*, I take from a Record in *Reyley's Placita Parliamentaria*, pag. 569. to this effect: (a) (a) 14 Ed. 2: Par. 2. Memb. 21 Int. In the 14th of *Edward* the Second, the King sent his Letters Patents to the Lord Justice of *Ireland*, letting him know, That he had been moved by his *Parliament* at *Westminster*, that he would give Order that the *Irish Natives* of *Ireland*, might enjoy the *Laws of England* concerning *Life* and *Member*, in as large and ample manner as the *English* of *Ireland* enjoy'd the same. This therefore the King gives in Commandment,

mandment, and orders accordingly, by these his Letters Patents. From hence, I say, we may gather, That the Parliament of *England* did not then take upon them to have any *Jurisdiction* in *Ireland*, (for then they would have made a Law for *Ireland* to this Effect) but instead thereof, they Apply to the *King*, that he would interpose his Commands, and give Directions that this great Branch of the *Common Law* of *England* should be put in Execution in *Ireland* indifferently to all the Kings Subjects there, pursuant to the *Original Compact* made with them on their first Submission to the Crown of *England*.

Objection

drawn from a  
Writ of Error.

Let us now consider the great Objection drawn from a *Writ of Error's* lying from the *Kings Bench* of *England*, on a Judgment given in the *Kings Bench* in *Ireland*; which proves (as 'tis insisted on) that there is a *Subordination* of *Ireland* to *England*; and that if an *Inferiour* Court of Judicature in *England*, can thus take cognizance of, and over-rule the Proceedings in the like Court of *Ireland*; it will follow,

follow, that the *Supream Court* of Parliament in *England* may do the same, in relation to the Proceedings of the Court of Parliament in *Ireland*.

It must be confess'd that this has been the constant Practice; and it seems to be the great thing that induced my Lord Cook to believe that an Act of Parliament in *England*, and mentioning or Including *Ireland*, should Bind here. The Subordination of *Ireland* to *England*, he seems to infer from the Subordination of the *Kings Bench* of *Ireland*, to the *Kings Bench* of *England*. But to this I answer:

1. That 'tis the Opinion of several Learned in the Laws of *Ireland*, That this Removal of a Judgment from the *Kings Bench* of *Ireland*, by *Writ of Error*, into the *Kings Bench* of *England*, is founded on an Act of Parliament in *Ireland*, which is lost amongst a great number of other Acts, which we want for the space of 130 years at one time, and of 120 at another time, as we have noted before,

pag. 65. But it being only a *General Tradition*, that there was such an Act of our Parliament, we only offer it as a *Surmise*, the Statute it self does not appear.

2. Where a Judgment in *Ireland* is Removed, to be Revers'd in *England*, the Judges in *England* ought, and always do judge, according to the *Laws and Customs of Ireland*, and not according to the *Laws and Customs of England*, any otherwise than as these may be of Force in *Ireland*; but if in any thing the two *Laws* differ, the *Law of Ireland* must prevail, and guide their Judgment. And therefore in the Case of one *Kelly*, Removed to the *Kings Bench* in *England*, in the beginning of King *Charles the First*, one Error was assigned that the *Præcipe* was of *Woods and Underwoods*, which is a manifest Error, if brought in *England*; but the Judges finding the Use to be *Otherwise* in *Ireland*, judged it *No Error*. So in *Crook, Charles*, fol. 511. *Mulcarry* vers. *Eyres*. Error was assigned for that the Declaration was of one hundred Acres



Acres of *Bogg*, which is a word not known in *England*; but 'twas said, It was well enough understood in *Ireland*, and so adjudged *No Error*.

From whence, I conceive, 'tis manifest, that the Jurisdiction of the Kings Bench in *England*, over a Judgment in the Kings Bench of *Ireland*, does not proceed from any Subordination of one Kingdom to the other; but from some other Reason, which we shall endeavour to make out.

3. We have before observed, That in the Reign of *K. Henry the Third*, *Gerald Fitz-Maurice*, Lord Justice of *Ireland*, sent four Knights to know what was held for Law in *England* in the Case of *Coparceners*. The Occasion of which Message (as before we have noted out of the Kings Rescript) was, because the Kings Justice of *Ireland* was ignorant what the Law was. We may reasonably imagine that there were many Messages of this kind; for in the Infancy of the English Government, it may well be supposed,

posed, that the Judges in *Ireland* were not so deeply versed in the Laws of *England*. This occasioned Messages to *England*, Before Judgment given in *Ireland*, to be inform'd of the Law. And After Decrees made, Persons who thought themselves aggrieved by *Erroneous* Judgments, apply'd themselves to the King in *England* for Redress. Thus it must be, that Writs of Error (unless they had their Sanction in Parliamēt) became in use. Complaints to the King by those that thought themselves injur'd, increased; and at last grew into Custom; and obtain'd the Force of Law.

Perhaps it may be Objected, That If the Judges of the Kings Bench in *England* ought to Regulate their Judgment by the Customs of *Ireland*, and not of *England*, it will follow, that this Original which we assign of Writs of Error to *England*, is not right.

I Answer, That this may be the *Primary Original*, and yet consist well enough with what we have before

before laid down : For tho' the Common Law of *England* was to be the Common Law of *Ireland*, and *Ireland* at the beginning of its English Government might frequently send into *England* to be inform'd about it ; yet this does not hinder, but *Ireland*, in a long Process of Time, may have some smaller Customs and Laws of its own, gradually but insensibly crept into Practice, that may in some measure differ from the Customs and Practice of *England*; and where there is any such, the Judges of *England* must regulate their Sentence accordingly, tho' the first Rise of Writs of Error to *England*, may be as we have here suggested. In like manner, where the Statute-Law of *Ireland* differs from that of *England*, the Judges of *England* will regulate their Judgments by the Statute-law of *Ireland*: This is the constant Practice, and notoriously known in *Westminster-Hall*: From which it appears, that removing a Judgment from the Kings Bench of *Ireland*, to the Kings Bench of *England*, is but an Appeal to the King in his Bench

of *England*, for his Sense, Judgment, or Exposition of the Laws of *Ireland*. But of this more hereafter.

4. When a *Writ of Error* is Returned into the Kings Bench of *England*, Suit is made to the King only; The Matter lies altogether before Him; and the Parry complaining applies to No Part of the Political Government of *England* for Redress, but to the King of *Ireland* only, who is in *England*: That the King only is sued to, our Law-Books make Plain. This Court is call'd *Curia Domini Regis*, and *Aula Regia*, because the King used to sit there in Person, as *Lambard* tells us; And every Cause brought there, is said to be *coram Domino Rege*, even at this very day, *Cooke* 4 Inst. p. 72. Therefore if a Writ be returnable *coram nobis ubicunque fuerimus*, 'tis to be Return'd to the Kings Bench. But if it be Returnable *coram Justiciariis nostris apud Westm.* 'tis to be Return'd into the Common Pleas. This Court (as *Glavinil* and other Antients tells us) used to Travel with the King, where-

where-ever he went. And *Fleta*, in describing this Court, says, *Habet Rex Curiam suam & Justiciarios suos, coram quibus, & non alibi nisi coram semet ipso, &c. falsa Judicia & Errores revertuntur & Corriguntur.*

The King then (as *Britton* says) having Supream Jurisdiction in his Realm, to judge in all Causes whatsoever ; therefore it is, that *Erroneous Judgments* were brought to him out of *Ireland*. But this does not argue that *Ireland* is therefore *Subordinate to England* ; for the People of *Ireland* are the *Subjects* of the King to whom they Appeal. And 'tis not from the Country where the Court is held, but from the *Presence* and *Authority* of the King (to whom the People of *Ireland* have as good a Title as the People of *England*) that the *Præminence of the Jurisdiction* does flow, And I question not, but in former times, when these Courts were first Erected, and when the King Exerted a greater Power in Judicature than he does now, and he used to sit in his own Court, that if he had Travell'd into *Ireland*, and the Court had follow'd him

him thither ; Erroneous Judgments might have been removed from *England* before him into his Court in *Ireland* ; for so certainly it must be, since the Court Travell'd with the King. From hence it appears, that all the Jurisdiction, that the Kings Bench in *England*, has over the Kings Bench in *Ireland*, arises only from the Kings Presence in the former. And the same may be said of the Chancery in *England*, if it will assume any Power to Controul the Chancery in *Ireland* ; because (as *Lambard* says, p. 69, 70.) The Chancery did follow the King, as the Kings Bench did ; and that, as he tells us out of the Lord Chief Justice Scroope, the Chancery and the Kings Bench were once but one Place. But if this be the ground of the Jurisdiction of the Kings Bench in *England* over the Kings Bench in *Ireland*, (as I am fully perswaded it is ) the Parliament in *England* cannot from hence claim any Right of Jurisdiction in *Ireland*, because they claim a Jurisdiction of their own ; and their Court is not the Kings Court, in that proper and strickt sence that the Kings Bench is.

But



But granting that the Subordination of the Kings Bench in Ireland, to the Kings Bench in England, be rightly concluded from a Writ of Error out of the latter, lying on a Judgment in the former. I see no Reason from thence to conclude, that therefore the Parliament of Ireland is Subordinate to the Parliament in England, unless we make any one sort of Subordination, or in any one part of Jurisdiction, to be a Subordination in all Points, and all parts of Jurisdiction. The Subjects of Ireland may Appeal to the King in his Bench in England, for the Expounding of the Old common and Statute-Law of Ireland; will it therefore follow that the Parliament of England shall make New Laws to bind the Subjects in Ireland? I see no manner of Consequence in it; unless we take Expounding Old Laws, (or Laws already made) in the Kings Bench, and making New Laws in Parliament, to be one and the same thing. I believe the best Logician in Europe will hardly make a Chain of Syllogisms, that from such Premises,

will

will regularly induce such a *Conclusion*.

To close this Point, We find that a Judgment of the Kings Bench in *Ireland*, may be Removed by a Writ of Error to the Parliament in *Ireland*. But the Judgment of the Parliament of *Ireland* was never question'd in the Parliament of *England*. This Appears from the *Prior of Lanthony's Case* aforegoing.

Declaration in  
the Irish Act  
of Faculties.

I shall conclude this our Fifth Article with a memorable Passage out of our Irish Statutes, which seems to strengthen what we have delivered on the Business of a *Writ of Error*, as well as the chief Doctrine I drive at; and that is 28 *H. VIII. Chap. 19. The Act of Faculties*. This Statute is a Recital at large of the English Act of the 25 *Hen. VIII. c. 21*. In the Preamble of which English Act 'tis Declared; *That this Your Graces Realm Recognizing no Superiour but Your Grace, hath been and yet is free from any Subjection to any Mans Laws, but only such as have been Devised with-*

*In this Realm, for the Wealth of the same, or to such others, as by Sufferance of Your Grace and Your Progenitors, the People of the Realm have taken at their Free Liberties by their own Consent; and have bound themselves by long Use and Custom to the Observance of, &c.*

*This Declaration, with the other Clauses of the said English Act, is verbatim recited in the Irish Act of Faculties; and in the said Irish Act it is Enacted, That the said English Act, and every thing and things therein contained, shall be Established, Affirmed, Taken, Obey'd and Accepted within this Land of Ireland as a good and perfect Law, and shall be within the said Land of the same Force, Effect, Quality, Condition, Strength and Vertue, to all Purposes and Intents, as it is within the Realm of England; (if so, then the said Clause declares our Right of being bound only by Laws to which we Consent, as it does the Right of the People of England) And that all Subjects within the said Land of Ireland, shall enjoy the Profit and Commodity thereof, in like manner  
as*

*As the Kings Subjects of the Realm  
of England.*

*Farther Reasons offered in  
behalf of  
Ireland.*

I am now Arrived at our Sixth  
and Last Article Propos'd, viz. The  
*Reasons and Arguments* that may be  
be farther Offered on one side and t<sup>o</sup>ther  
in this Debate.

*England's Title  
to Ireland  
by Purchase.*

I have before taken notice of the  
Title *England* pretends over us  
from *Conquest*: I have likewise en-  
quired into the *Precedents* on one  
side and t<sup>o</sup>ther, from *Acts of Par-  
liament*, from *Records*, and from  
*Reports* of the *Learned* in the  
*Laws*. There remains another  
Pretence or two for this *Subordina-  
tion*, to be Considered; and one is  
founded on *Purchase*.

'Tis said, That vast Quantity  
of Treasure, that from time to  
time has been spent by *England* in  
Reducing the Rebellions and carry-  
ing on the Wars of *Ireland*, has  
given them a just Title at least to  
the *Lands* and *Inheritances* of the  
Rebels, and to the absolute Dispos-  
al thereof in their Parliament;  
And as particular Examples of this,  
we

we are told of the great Sums Advanced by *England* for suppressing the Rebellion of the Irish Papists in 41. and Opposing the late Rebellion since King *WILLIAM's* Accession to the Throne.

To this I Answer, That in a War there is all Reason imaginable that the Estates of the Unjust Opposers should go to repair the the Damage that is done. This I have briefly hinted before. But if we consider the Wars of *Ireland*, we shall perceive they do not resemble the common Case of Wars between two Foreign Enemies; Ours are rather *Rebellions*, or *Intestine Commotions*; that is, The *Irish Papists* rising against the *King* and *Protestants* of *Ireland*; and then 'tis plain, that if these Latter, by the Assistance of their Brethren of *England*, and their Purse, do prove Victorious, the People of *England* ought to be fully Repaid: But then the manner of their Payment, and in what way it shall be Levied, ought to be left to the People of *Ireland* in Parliament Assembled: And so it was after  
the

the Rebellion of 41. The *Adventurers* then were at vast Charges; and there were several Acts of Parliament in *England* made for their Re-imbursing, by disposing to them the Rebels Lands. But after all, it was thought Reasonable that the Parliament of *Ireland* should do this in their own way; and therefore the *Acts of Settlement and Explanation*, made all the former English Acts of *No Force*; or at least did very much *Alter* them in many Particulars, as we have Noted before. In like manner we allow that *England* ought to be repaid all their Expences in suppressing this late Rebellion: All we desire is, That, in Preservation of our own Rights and Liberties, we may do it in our own Methods regularly in our own Parliament: And if the Re-imbursment be all that *England* stands upon, what availeth it whether it be done this way or that way, so it be done? We have an Example of this in Point between *England* and *Holland* in the Glorious Revolution under His Present Majesty: *Holland* in Assisting *England* Expended 600000 Pounds,



Pounds, and the English Parliament fairly repay'd them: It would have look'd oddly for *Holland* to have insisted on Disposing of Lord *Powis's* and other Estates, by their own Laws, to re-imburse themselves.

'Tis an Ungenerous thing to vil-lifie good Offices, I am far from doing it, but with all possible Gratitude Acknowledge the Mighty Benefits *Ireland* has often receiv'd from *England*, in helping to suppress the Rebellions of this Country; To *England's* Charitable Assistance our Lives and Fortunes are owing: But with all humble Submission, I desire it may be considered, whether *England* did not at the same time propose the *Prevention of their own Danger*, that would necessarily have attended our Ruine; if so, 'twas in some measure their *own Battels* they fought, when they fought for *Ireland*; and a great part of their Expence must be reckon'd in their *own Defence*.

Another thing alledged against *Ireland* is this; If a Foreign Nation,

Object. *Ireland* prejudicial to *England's* Trade, therefore to be Bound.

tion, as *France* or *Spain* for instance, prove prejudicial to *England*, in its Trade, or any other way; *England*, if it be stronger, redresses it self by Force of Arms, or Denouncing War; and why may not *England*, if *Ireland* lies cross their Interests, restrain *Ireland*, and bind it by Laws, and maintain these Laws by Force?

To this I answer: First, That it will hardly be instanced, that any Nation ever Declared War with another, meerly for over-topping them in some signal Advantage, which otherwise, or but for their Endeavours, they might have reaped. War only is Justifiable for *Injustice* done, or *Violence* offer'd, or *Rights* detain'd. I cannot by the Law of Nations, quarrel with a Man, because he, going before me in the Road, finds a Piece of Gold, which possibly, if he had not taken it up, I might have light upon and gotten. 'Tis true, we often see Wars commenced on this Account *under-hand*, and on Emulation in Trade and Riches; but then this is never made the *Open Pre-*  
tence

tence, some other *Colour* it must receive, or else it would not look fair; which shews plainly, that this Pretence of *being Prejudicial*, or of reaping Advantages which otherwise you might partake of, is not *Justifiable* in it self. But granting that it were a good Justification of a War with a *Foreign Nation*, it will make nothing in the Case between *England* and *Ireland*; for if it did, why does it not operate in the same manner between *England* and *Scotland*, and consequently in like manner draw after it *England's* binding *Scotland* by their Laws at *Westminster*: We are all the *same* Kings Subjects, the Children of one *Common Parent*; and tho' we may have our *Distinct* Rights and Inheritances absolutely within our selves; yet we ought not, when these do chance a little to interfere to the prejudice of one or t'other side, immediately to treat one another as Enemies; fair Amicable Propositions should be proposed, and when these are not hearkened to, then 'tis time enough to be at Enmity, and use Force.

Object. *Ireland*  
and a Colony.

The last thing I shall take Notice of, that some raise against us, is, That *Ireland* is to be look'd upon only as a Colony from *England*: And therefore as the *Roman Colonies* were subject to, and bound by, the Laws made by the *Senate at Rome*; so ought *Ireland* by those made by the *Great Council at Westminster*. Of all the Objections raised against us, I take this to be the most Extravagant; it seems not to have the least *Foundation* or *Colour* from *Reason* or *Record*: Does it not manifestly appear by the *Constitution of Ireland*, that 'tis a *Compleat Kingdom* within it self? Do not the *Kings of England* bear the *Stile of Ireland* amongst the rest of their Kingdoms? Is this Agreeable to the nature of a *Colony*? Do they use the Title of *Kings of Virginia, New-England, or Maryland*? Was not *Ireland* given by *Henry the Second* in a *Parliament at Oxford* to his Son *John*, and made thereby an *Absolute Kingdom, separate and wholly Independent on England*, till they both came United again in him, after the  
Death

Death of his Brother *Richard* without Issue? Have not multitudes of Acts of Parliament both in *England* and *Ireland*, declared *Ireland* a *Compleat Kingdom*? Is not *Ireland* stiled in them All, the *Kingdom*, or *Realm* of *Ireland*? Do these Names agree to a *Colony*? Have we not a Parliament, and Courts of Judicature? Do these *things* agree with a *Colony*? This on all hands involves so many Absurdities, that I think it deserves nothing more of our Consideration,

These being the only remaining Arguments that are sometimes mention'd *Against us*, I now proceed to offer what I humbly conceive *Demonstrates* the Justice of our Cause.

And herein I must beg the Reader's Patience, if now and then I am forced lightly to touch upon some Particulars foregoing. I shall Endeavour all I can to avoid prolix Repetitions; but my Subject requires that sometimes I just mention, or refer to, several Notes before delivered.

First therefore, I say, *That Ireland should be Bound by Acts of Parliament made in England, is against Reason, and the Common Rights of all Mankind.*

Against the  
Rights of  
Mankind.

All Men are by Nature in a state of Equality, in respect of Jurisdiction or Dominion: This I take to be a Principle in it self so evident, that it stands in need of little Proof. 'Tis not to be conceiv'd, that Creatures of the same Species and Rank, promiscuously born to all the same Advantages of Nature, and the use of the same Faculties, should be Subordinate and Subject one to another; These to this or that of the same Kind. On this Equality in Nature is founded that Right which all Men claim, of being free from all Subjection to Positive Laws, till by their own *Consent* they give up their Freedom, by entering into Civil Societies for the common Benefit of all the Members thereof. And on this *Consent* depends the *Obligation* of all *Humane Laws*; insomuch that without it, by the Unanimous Opinion of all

Consent only  
gives Law  
force.



all Jurists, no Sanctions are of any Force. For this let us Appeal, amongst many, only to the Judicious Mr. Hooker's Eccles. Polity, Book 1. Sec. 10. Lond. Edit. 1676. Thus He.

*Howbeit, Laws do not take their Constraining force from the Quality of such as Devise them, but from that Power which doth give them the strength of Laws. That which we spake before, concerning the Power of Government, must here be applied to the Power of making Laws whereby to Govern, which Power God hath over All; and by the Natural Law, whereunto he hath made all subject, the Lawful Power of making Laws, to command whole Politick Societies of Men, belongeth so properly unto the same entire Societies, that for any Prince or Potentate, of what kind soever upon Earth, to exercise the same of himself, and not either by expreis Commission immediately and personally receiv'd from God, or else by Authority derived at the first from their Consent, upon whose Persons they impose Laws, it is no better than meer Tyranny. Laws they are not therefore, which Publick Ap-*

probation hath not made so: But Approbation not only they Give, who Personally declare their Assent by Voice, Sign, or Act; but also when others do it in their Names, by Right Originally, at the least, derived from them: As in Parliaments, Councils, &c.

Again, Sith Men Naturally have no full and perfect Power to command whole Politick Multitudes of Men; therefore utterly without our Consent, we could in such sort be at no Mans Commandment living. And to be commanded we do consent, when that Society whereof we are part, hath at any time before consented, without revoking the same after by the like Universal Agreement. Wherefore as any Mans Deed past is good, as long as himself continueth, so the Act of a Publick Society of Men, done five hundred years sithence, standeth as theirs who presently are of the same Societies, because Corporations are Immortal; we were then alive in our Predecessors, and they in their Successors do still live. Laws therefore Humane of what kind soever, are available by Consent, &c.

And

And again, *But what matter the Law of Nations doth contain, I omit to search ; the strength and vertue of that Law is such, that no particular Nation can lawfully prejudice the same by any their severall Laws and Ordinances, more then a Man by his Private Resolutions the Law of the whole Commonwealth or State wherein he liveth ; for as Civil Law being the Act of a whole Body Politick, doth therefore over-rule each Civil part of the same Body ; so there is no Reason that any one Commonwealth of it self, should to the Prejudice of another, annihilate that whereupon the whole World hath Agreed.*

To the same purpose may we find the Universal Agreement of all Civilians, *Grotius, Puffendorf, Lock's Treat. Government, &c.*

No one or more Men, can by Nature challenge any *Right, Liberty or Freedom*, or any *Ease in his Property, Estate or Conscience*, which all other Men have not an *Equally Just Claim to*. Is *England* a *Free People*? So ought *France* to be. Is *Poland* so? *Turky* likewise, and all  
the

the *Eastern Dominions*, ought to be so : And the same runs throughout the whole *Race of Mankind*.

Against the  
Common  
Law of Eng-  
land.

Secondly, 'Tis against the Common Laws of *England*, which are of Force both in *England* and *Ireland*, by the *Original Compact* before hinted. It is Declared by both Houses of the Parliament of *England*, 1 Jac. cap. 1. *That in the High Court of Parliament, all the whole Body of the Realm, and every particular Member thereof, either in Person, or by Representation (upon their own Free Elections) are by the Laws of this Realm deem'd to be Personally present.* Is this then the common Law of *England*, and the Birth-right of every Free-born English Subject ? And shall we of this Kingdom be deny'd it, by having Laws imposed on us, where we are neither Personally, nor Representatively present ? My Lord Cooke in his 4th Inst. cap. 1. saith, *That all the Lords Spiritual and Temporal, and all the Commons of the whole Realm, ought ex Debito Justitiæ to be Summon'd to Parliament, and none of them ought to be Omitted.* Hence

it is call'd *Generale Concilium* in the Stat. of *Westminst.* 1. and *Commune Concilium*, because it is to comprehend all Persons and Estates in the whole Kingdom. And this is the very Reason given in the Case of the *Merchants of Waterford* foregoing, why Statutes made in *England*, should not bind them in *Ireland*, *Quia non habent Milites hic in Parlamento*; Because they have no *Representatives* in the Parliament of *England*. My Lord *Hobbar*d in the Case of *Savage and Day*, pronounced it for Law, That whatever is against Natural Equity and Reason, is against Law; Nay, if an Act of Parliament were made against Natural Equity and Reason, that Act was void. Whether it be not against Equity and Reason, that a Kingdom regulated within it self, and having its own Parliament, should be Bound *without their Consent*, by the Parliament of another Kingdom, I leave the Reader to consider. My Lord *Cooke* likewise in the first Part of his *Institutes*, fol. 97. b. saith, *Nihil quod est contra Rationem est Licitum*. And in the old *Modus Tenendi Parliamenta* of *England*,

*England*, said to be writ about *Edward the Confessor's* time, and to have been Confirmed and Approved by *William the Conqueror*: It is expressly declared; That all the *Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesse*s ought to be summoned to Parliament. The very same is in the *Modus* sent into *Ireland* by *Henry the 2d.* And in *King John's Great Charter* dated 17. *Johannis*, 'tis granted in these words, *Et ad habend. Commune Concilium Regni de Auxiliis & Scutagiis Assidendis, Submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, & Maiores Barones, Regni Sigillatim per Litteras Nostras, & faciemus submoneri in generali per Vicecomites omnes alios, &c.* *Math. Paris ad An. 17. Johann.* All are to be Summoned to Parliament, the *Nobility* by special Writts; the *Commons* by general Writts to the Sheriffs. And is this the *Common Law of England*? Is this part of those *Liberæ Consuetudines*, that were contained in the *Great Charter* of the *Liberties* of the People of *England*; And were so solemnly granted by *Henry II.*

King



King *John*, and *Henry* the 3d, to the *People of Ireland*, that they shou'd Enjoy and be Govern'd by ; and unto which they were Sworn to be Obedient ; And shall they be of Force *only in England*, and not in *Ireland* ? Shall *Ireland* Receive these *Charters of Liberties*, and be no Partakers of the *Freedoms* therein contained ? Or do these words signifie in *England* *one thing*, and in *Ireland* *no such thing* ? This is so repugnant to all Natural Reason and Equity, that I hope no Rational Man will Contest it : I am sure if it be so, there's an end of all Speech amongst Men ; All Compacts, Agreements, and Societies, are to no purpose.

3. It is against the Statute Laws both of *England*, and *Ireland* : this has been pretty fully disuss'd before ; however I shall here again take notice, That (a) in the 10. of *Henry* the 4th it was Enacted in *Ireland*, that Statutes made in *England* should not be of Force in *Ireland*, unless they were Allowed and Published by the Parliament of *Ireland*. And the like Statute was made the 29th of

Against the Statute Law both of *England* and *Ireland*.

(a) See before pag. 65.

of

of *Henry the 6th.* And in the 10th Year of *Henry the 7th.* Chap. 23 Irish Statutes, The Parliament which was held at *Drogheda*, before Sir *Christopher Preston*, Deputy to *Jaspar Duke of Bedford*, Lieutenant of *Ireland*, was declared Void, for this Reason amongst others, *That there was no General Summons of the said Parliament to all the Shires, but only to Four.* And if Acts of Parliament made in *Ireland* shall not Bind that People, because some Counties were omitted: how much less shall either their Persons or Estates be Bound by those Acts made in *England*, whereat no one County, or Person of that Kingdom is present? In the (b) 25th

(b) Pultons  
Col. Eng.  
Stats. Edit.  
1670. pag. 63.

of *Edward the 1st.* Cap. 6. It was Enacted by the Parliament of *England* in these Words, *Moreover from henceforth we shall take no manner of Aid, Taxes, or Prizes, but by the Common Assent of the Realm.* (c)

(c.) *ibid.* page.  
75.

And again in the *Statute of Liberties*, by the same King, Cap. 1. *De Tallag. non Concedend.* it is Enacted in these Words. *No Tallage or Aid shall be Taken or Levyd by Us, or Our Heirs, in Our Realm, without the*

*the Good Will and Assent of Archbishops, Bishops, Earls, Barons, Knights, Burgeses, and other Freemen of the Land.* The like Liberties are specially Confirm'd to the Clergy, (d) <sup>(d) ibid. pag. 113.</sup> the 14th of *Edward* the 3d. And were these Statutes, and all other Statutes and Acts of the Parliament of *England* Ratified, Confirmed, and Adjudged by several Parliaments of *Ireland* to be of Force within this Realm: And shall the People of *Ireland* receive no Benefit by those Acts? Are those Statutes of Force in *England* only; And can they add no Immunity or Priviledge to the Kingdom of *Ireland*, when they are received there? Can the King and Parliament make Acts in *England* to Bind his Subjects of *Ireland* without their Consent; And can he make no Acts in *Ireland* with their Consent, whereby they may receive any Priviledge or Immunity? This were to make the *Parliaments of Ireland* wholly Illusory, and of no Effect. If this be Reasonable Doctrine, To what end was *Poyning's Law* in *Ireland*, (e) <sup>(e) 10 H. 7. c. 22</sup> that makes all the Statutes of *England* before that, in Force in this Kingdom;

dom? This might as well have been done, and again undone, when they please, by a single Act of the English Parliament. But let us not make thus light of Constitutions of Kingdoms, 'tis *Dangerous* to those who *do it*, 'tis *Grievous* to those that *suffer it*.

Moreover, Had the King or his Council of *England*, in the 10th year of *Hen. VII.* in the least dreamt of this Doctrine, to what end was all that strict Provision made by *Poyning's Act*, Irish Stat. cap. 4. That no Act of Parliament should pass in *Ireland*, before it was first Certified by the Chief Governour and Privy Council here, under the Broad Seal of this Kingdom, to the King and his Privy Council in *England*, and received their Approbation, and by them be remitted hither under the Broad Seal of *England*, here to be pass'd into a Law? The design of this Act, seems to be the Prevention of any thing passing in the Parliament of *Ireland* *Surreptitiously*, to the *Prejudice* of the *King*, or the *English Interest* of *Ireland*. But this was a  
needless

needless Caution, if the King, and Parliament of *England*, had Power at any time to revoke or annul any such Proceedings. Upon this *Act of Poyning's*, many and various Acts have pass'd in *Ireland*, relating to the Explanation, Suspension, or farther Corroboration thereof, in divers Parliaments, both in *Henry the Eighth's*, *Phil. & Mary's*, and *Q. Eliz.* Reigns; for which see the Irish Statutes. (a) All which shew that this *Doctrine* was hardly so much as *Surmised in those Days*, however we come to have it raised in these *Latter Times*.

(a) 28 H. 8. c. 4.  
28 H. 8. c. 30.  
3 & 4 Ph. & M.  
c. 4.  
11 Eliz. Sef. 2.  
c. 1.  
11 Eliz. Sef. 3.  
c. 8.

Fourthly, 'Tis against several *Charters of Liberties* Granted unto the Kingdom of *Ireland*: This likewise is clearly made out by what foregoes. I shall only add in this place, That in the Patent-Roll of the 17 *Rich. 2. m. 34. de Confirmatione*, There is a Confirmation of several *Liberties* and *Immunities* granted unto the Kingdom and People of *Ireland* by *Edw. III.* The Patent is somewhat long, but so much as concerns this Particular, I shall render *verbatim*, as I have it

Against several Concessions made to *Ireland*.

Transcribed from the Roll by Sir  
 William Donville, Attorney General  
 in Ireland during the whole Reign  
 of King Charles II. Rex omnibus,  
 &c. Salutem : Inspeximus Literas  
 Patentes Domini Edwardi nuper Re-  
 gis Angliæ, Avi nostri fact. in hæc  
 verba : Edwardus Dei Gra. Rex  
 Angliæ & Franciæ, & Dominus Hi-  
 berniæ, Archiepiscopis, Episcopis, Ab-  
 batibus, Prioribus, Ministris nostris  
 tam Majoribus quam Minoribus, &  
 quibuscunque aliis de Terra nostra  
 Hiberniæ fidelibus nostris ad quos  
 Præsentes Literæ pervenerint, Salu-  
 tem : Quia, &c. Nos hæc quæ sequun-  
 tur Ordinanda Duximus & firmiter  
 observanda, &c. Imprimis, vizt. Vo-  
 lumus & Præcipimus quod Sancta Hi-  
 bernicana Ecclesia suas Libertates &  
 Liberas Consuetudines illesas habeat,  
 & eis Libere gaudeat & Utatur.  
 Item volumus & præcipimus quod no-  
 stra & ipsius Terræ Negotia presertim  
 Majora & Ardua in Consiliis per Pe-  
 ritos Consiliaros nostros ac Prælatos &  
 Magnates & quosdam de Discretiori-  
 bus & Probioribus Hominibus de par-  
 tibus vicinis ubi ipsa Concilia teneri  
 Contigerit propter hoc evocandos, in  
 Parliamentis vero per ipsos Concilia-  
 res



ros nostras ac Prælatos & Proceres  
 aliosque de terra prædicta prout Mos  
 Exegit secundum Justiciam Legem  
 Consuetudinem & Rationem tracten-  
 tur deducantur & fideliter timore fa-  
 vore odio aut prætio post positis dis-  
 cutiantur ac etiam terminentur, &c.  
 In Cujus Rei Testimonium has Literas  
 nostras fieri fecimus Patentes Teste  
 meipso Apud Westminst. 25 die Octob.  
 Anno Regni nostris Angliæ 31, Regni  
 vero Franciæ 18. Nos autem Ordina-  
 tiones Voluntates & Præcepta Præ-  
 dicta ac omnia alia & singula in Lit-  
 teris prædictis Contenta Rata Haben-  
 tes & Grata Ea pro nobis & Hære-  
 dibus nostris quantum in nobis est Ac-  
 ceptamus, Approbamus, Ratificamus,  
 & Confirmamus prout Literæ prædi-  
 ctæ rationabiliter testanter. In Cujus,  
 &c. Test. Reg. apud Westminst. 26  
 die Junii.

Fifthly, It is inconsistent with the Royalties and Præeminence of a Separate and Distinct Kingdom. That we are thus a Distinct Kingdom, has been clearly made out before. 'Tis plain, the Nobility of Ireland are an Order of Peers clearly Distinct from the Peerage of England, the

Inconsistent  
 with the Roy-  
 alties of a  
 Kingdom.

Priviledges of the one, extend not into the other Kingdom; a Lord of *Ireland* may be Arrested by his Body in *England*, and so may a Lord of *England* in *Ireland*, whilst their Persons remain Sacred in their respective Kingdoms: A *Voyage Royal* may be made into *Ireland*, as the Year-Book, 11 *Hen.4.17.fol.7.* and Lord Cook tells us; and King *John* in the 12th year of his Reign of *England*, made a *Voyage Royal* into *Ireland*; and all his Tenants in Chief, which did not attend him in that Voyage, did pay him *Escuage*, at the Rate of Two Marks for every *Knights Fee*; which was imposed *super Prælatiſ & Baroniſ pro Paſſagio Regiſ in Hibernia*, as appears by the Pipe-Roll, *Seutag. 12 Johannis Regiſ in Scaccario Angl.* Which shews that we are a *Compleat Kingdom* within our selves, and not little better than a *Province*, as some are so Extravagant as to Assert; none of the Properties of a *Roman Province* agreeing in the least with our Constitution. 'Tis Resolved in Sir *Richard Pembrough's* Case in the 44th of *Edw.III.* That Sir *Richard* might lawfully refuse the

the King, to serve him as his Deputy in Ireland, and that the King could not Compel him thereto, for that were to Banish him into another Kingdom, which is against Magna Charta, Chap. 29. Nay, even tho' Sir Richard had great Tenures from the King, *pro servitio Impenso & Impendendo*, for that was said must be understood within the Realm of England, Cooks 2d Inst. pag. 47. And in Pilkington's Case aforementioned, Fortescue declared, That the Land of Ireland is and at all times hath been a Dominion Separate and Divided from England. How then can the Realms of England and Ireland, being Distinct Kingdoms and Separate Dominions, be imagin'd to have any Superiority or Jurisdiction the one over the other. 'Tis absurd to fancy that Kingdoms are Separate and Distinct meerly from the Geographical Distinction of Territories. Kingdoms become Distinct by Distinct Jurisdictions, and Authorities Legislative and Executive; and as *Rex est qui Regem non habet*, so *Regnum est quod alio non Subjicitur Regno*. A Kingdom can have no Supremacy; 'tis in it self Supream with-

in it self, and must have all Jurisdictions, Authorities and Præeminencies to the Royal State of a Kingdom belonging, or else 'tis none : And that *Ireland* has all these, is declared in the Irish Stat. 33. Hen. VIII. c. 1. The chief of these most certainly is, the *Power of Making and Abrogating its own Laws*, and being bound only by such to which the *Community* have given their *Consent*.

Against the  
Kings Prero-  
gative.

Sixthly, It is *against the Kings Prerogative*, that the Parliament of *England* should have any Co-ordinate Power with Him, to introduce New Laws, or Repeal Old Laws Established in *Ireland*. By the Constitution of *Ireland* under *Poyning's Act*, the King's Prerogative in the Legislature is advanced to a much higher Pitch than ever was Challenged by the Kings in *England*, and the Parliament of *Ireland* stands almost on the same bottom as the King does in *England*; I say almost on the same Bottom, for the Irish Parliament have not only a *Negative Vote* (as the King has in *England*) to whatever Laws the King and

and his Privy Councils of both or either Kingdom, shall lay before them; but have also a Liberty of *Proposing* to the King and his Privy Council here, such Laws as the Parliament of *Ireland* think expedient to be pass'd. Which Laws being thus *Proposed* to the King, and put into form, and Transmitted to the Parliament here, according to *Poyning's Act*, must be Pass'd or Rejected in the *very Words*, even to a *Tittle*, as they are laid before our Parliament, we cannot alter the least *Iota*. If therefore the *Legislature* of *Ireland* stand on this foot, in relation to the King, and to the Parliament of *Ireland*; and the Parliament of *England* do Remove it from this Bottom, and Assume it to themselves, where the Kings Prerogative is much *Narrower*, and as it were *Reversed*, (for there the King has only a *Negative Vote*) I humbly conceive 'tis an *Incroachment* on the Kings Prerogative: But this I am sure, the Parliament of *England* will be always very Tender of, and His Majesty will be very loth to have such a Precious Jewel of his Crown handled ruffly.

The Happiness of our Constitu-  
tions depending on a Right Tem-  
perament between the Kings and the  
Peoples Rights.

Against the  
Practice of  
former Ages.

Seventhly, It is against the Practice  
of all former Ages. Wherein can it  
appear, that any Statute made in  
England, was at any time since the  
Reign of Henry the Third, allowed  
and put in practice in the Realm of  
Ireland, without the Authority of  
the Parliament of Ireland. Is it not ma-  
nifest by what foregoes, that from  
the Twentieth of King Henry  
the Third, to the Thirteenth of  
Edward the Second, and from thence  
to the Eighteenth of Henry the  
Sixth, and from thence, to the Thir-  
ty-Second of Henry the Sixth, and  
from thence, to the Eighth of Ed-  
ward the Fourth, and from thence,  
to the Tenth of Henry the seventh,  
there was special care taken to in-  
troduce the Statutes of England,  
(such of them as were necessary or  
convenient for this Kingdom) by  
degrees, and always with Al-  
lowance, and Consent of the Parlia-  
ment and People of Ireland. And  
since the General Allowance, of all  
the



the English Acts and Statutes in the Tenth of *Henry* the Seventh, there have several Acts of Parliament, which were made in *England* in the Reigns of all the Kings from that Time, Successively to this very Day, been particularly Received by Parliament in *Ireland*, and so they become of force here, and not by reason of any General Comprehensive words, as some Men have lately fancied. For If by General Comprehensive Words, the Kingdom of *Ireland* could be bound by the Acts of Parliament of *England*, what needed all the former Receptions in the Parliament of *Ireland*, or what use will there be of the Parliament of *Ireland* at any time? If the Religion, Lives, Liberties, Fortunes, and Estates of the Clergy, Nobility, and Gentry of *Ireland*, may be dispos'd of, without their Privy and Consent, what Benefit have they of any Laws, Liberties, or Priviledges granted unto them by the Crown of *England*? I am loth to give their Condition an hard Name; but I have no other Notion of Slavery, but being Bound by a Law to which I do not Consent.

Against the  
Resolution of  
Judges.

Eighthly, 'Tis against *several Resolutions* of the *Learned Judges*, of former times in the very Point in Question. This is manifest from what foregoes in the Case of the *Merchants of Waterford*, *Pilking-ton's Case*, *Prior of Lanthony's Case*, &c. But I shall not here in-  
large farther thereon.

Destroys Pro-  
perty.

Ninthly, The Obligation of all Laws having the same Foundation, if One Law may be Imposed without Consent, any Other Law whatever, may be Imposed on us Without our Consent. This will naturally introduce Taxing us with-  
out our Consent; and this as neces-  
sarily destroys our Property. I have no other Notion of Property, but a Power of *Disposing my Goods as I please*, and not as another shall Command. Whatever ano-  
ther may *Rightfully* take from me without my Consent, I have certain-  
ly no Property in. To Tax me without Consent, is little better, if at all, than *down-right Robbing me*. I am sure the Great Patriots of Li-  
berty and Property, the Free Peo-  
ple

ple of *England*, cannot think of such a thing, but with Abhorrence.

Lastly, The People of *Ireland* are left by this Doctrine in the Greatest *Confusion* and *Uncertainty* Imaginable. We are certainly bound to Obey the *Supream Authority* over us; and yet hereby we are not permitted to know *Who* or *What* the same is; whether the *Parliament of England*, or *that of Ireland*, or *Both*; And in what Cases the *One*, and in what the *Other*: Which *Uncertainty* is or may be made a Pretence at any time for *Disobedience*. It is not impossible but the Different Legislatures we are subject to, may Enact Different, or Contrary Sanctions: Which of these must we obey?

Creates Confusion.

To conclude all, I think it highly *Inconvenient* for *England* to Assume this Authority over the Kingdom of *Ireland*: I believe there will need no great Arguments to convince the Wise Assembly of English Senators, how *inconvenient* it may be to *England*, to do that which may make

Inconvenient to *England* to Assume this Power.

make the *Lords and People of Ire-*  
*land* think that they are not *Well*  
*Used*, and may drive them into  
*Discontent*. The *Laws and Liber-*  
*ties of England* were granted above  
 five hundred years ago to the *Peo-*  
*ple of Ireland*, upon their *Submis-*  
*sions to the Crown of England*,  
 with a *Design to make them Easie*  
*to England*, and to keep them in  
 the *Allegiance of the King of Eng-*  
*land*. How *Consistent* it may be  
 with *True Policy*, to do that which  
 the *People of Ireland* may think is  
 an *Invasion of their Rights and Li-*  
*berties*, I do most humbly submit  
 to the *Parliament of England* to  
 Consider. They are *Men of Great*  
*Wisdom, Honour, and Justice*: and  
 know how to prevent all future *In-*  
*conveniencies*. We have heard *Great*  
*Out-cries*, and deservedly, on *Break-*  
*ing the Edict of Nantes*, and other  
*Stipulations*; How far the *Break-*  
*ing our Constitution*, which has  
 been of *Five Hundred years stand-*  
*ing*, exceeds that, I leave the *World*  
 to judge. It may perhaps be urg'd,  
 That 'tis *convenient for the State of*  
*England*, that the *Supream Council*  
 thereof should make their *Jurisdic-*  
 tion

tion as Large as they can. But  
 with Submission, I conceive that  
 if this *Assumed Power* be not *Just*,  
 it cannot be *convenient* for the  
 State. What *Cicero* says in his *Of-  
 fices*, *Nihil est Utile, nisi idem sit  
 Honestum*, is most certainly true.  
 Nor do I think, that 'tis any wise  
*necessary* to the *Good* of *England* to  
*Assent* this High Jurisdiction over  
*Ireland*. For since the Statutes of  
 this Kingdom are made with such  
*Caution*, and in such *Form*, as is  
 prescribed by *Poyning's Act* 10 H. 7.  
 and by the 3d and 4th of *Phil.* and  
*Mar.* and whilest *Ireland* is in *En-  
 glish hands*, I do not see how 'tis  
 possible for the Parliament of *Ire-  
 land* to do any thing that can be in  
 the least *prejudicial* to *England*.  
 But on the other hand, If *England*  
 assume a *Jurisdiction* over *Ireland*,  
 whereby they think their *Rights*  
 and *Liberties* are taken away; That  
 their *Parliaments* are rendred meerly  
*nugatory*, and that their *Lives* and  
*Fortunes* Depend on the Will of a  
*Legislature* wherein they are not  
*Parties*; there may be ill Conse-  
 quences of this. *Advancing* the Pow-  
 er of the Parliament of *England*, by  
 breaking

*breaking the Rights of another, may in time have ill Effects.*

The *Rights of Parliament* should be preserved *Sacred and Inviolable*, wherever they are found. This kind of Government, once so *Universal* all over *Europe*, is now almost *Vanished* from amongst the Nations thereof. Our Kings *Domini- ons* are the only Supporters of this noble *Gothick Constitution*, save only what little remains may be found thereof in *Poland*. We should not therefor e make so light of that sort of Legislature, and as it were Abolish it in One Kingdom of the Three, wherein it appears ; but rather Cherish and Encourage it wherever we meet it.

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FINIS.

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